(19,312.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904.

No. 237.

W. L. WELLS COMPANY, PETITIONER,

vs.

GASTONIA COTTON MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 469.

GASTONIA COTTON MANUFACTURING COMPANY,
PLAINTIFF IN ERROR,

versus

W. L. WELLS COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE, N. C.

Record Filed September 24th, 1902.

[Stamp:] Clerk's Office, U. S. Circuit Court of Appeals, Fourth Circuit. H. T. Meloney, Clerk, Richmond.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Western District of North Carolina, } To-wit:

At a Circuit Court of the United States for the Western District of North Carolina, begun and held at the Courthouse in the city of Charlotte, on the second Monday of June, being the 9th day of the same month, in the year of our Lord, one thousand, nine hundred and two.

Present: The Honorable James E. Boyd, Judge of the Western District of North Carolina.

Among other were the following proceedings, to-wit:

No. 384.

W. L. Wells Company
vs.
Gastonia Cotton Manufacturing Company. } At Law.

Theretofore, to-wit: On the 7th day of October A. D., 1901, the plaintiff files in our said Circuit Court of the United States a bond for costs as follows, to wit.:

BOND FOR COSTS.

UNITED STATES OF AMERICA,
Western District of North Carolina. }

Whereas W. L. Wells Company has brought the above entitled action against the Gastonia Cotton Manufacturing Company, the defendant above named, and desires to give the undertaking required by law to secure the costs;

Now, therefore, W. L. Wells Company, as principal, and the United States Fidelity and Guaranty Company, as surety, undertake in the sum of two hundred dollars that the plaintiff shall pay to the defendant all costs that may be adjudged against the plaintiff,

2 in favor of the defendant in the above entitled action, not exceeding the sum of two hundred dollars.

Oct. 4th, 1901.

W. L. WELLS CO.,
By JONES & TILLETT, Attys.
THE UNITED STATES FIDELITY & GUARANTY CO. OF M. *D.*,
By J. W. COBB, Atty.

Endorsement:

Filed in this office Oct. 7th, 1901.

H. C. COWLES, Clerk.

SUMMONS.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF NORTH CAROLINA, CIRCUIT COURT, FOURTH CIRCUIT.

W. L. Wells Company, Plaintiff, *against* Gastonia Cotton Manufacturing Company, Defendants. } Summons.

The President of the United States of America, to the Marshal of the Western District of North Carolina—Gree-ing:

You are hereby commanded to summon Gastonia Cotton Manufacturing Company, citizen and resident of the Western District of North Carolina, to appear before the judges of the Circuit Court of the United States, at the next term of said court, to be held for the district aforesaid, at Charlotte, on the second Monday in December next, then and there to answer to the complaint of W. L. Wells Company, the plaintiff herein, citizen and resident of the State of Mississippi, which complaint will be filed in said court within the first three days of said term. And let the said defendant take notice, that if it fail to answer the said complaint within the time limited by law, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not, and have you then and there this summons.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Charlotte, in said district, the

3 7th day of October, 1901, and in the 126th year of the Independence of the United States.

[Seal of U. S. Circuit Court.] H. C. COWLES,
Clerk U. S. Circuit Court Western District of North Carolina.

Original.

MARSHAL'S RETURN TO SUMMONS.

Received Oct. 8th, 1901.
Executed by delivering copy to John F. Love, this Oct. 8, 1901.

J. M. MILLIKAN,
U. S. Marshal.
By B. N. HAMPTON, D. M.

Endorsement:

Filed in this office Oct. 11, 1901.

H. C. COWLES, Clerk.

COMPLAINT.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF NORTH CAROLINA, CIRCUIT COURT, CHARLOTTE.

No. 384.

W. L. Wells Company, Plaintiff,
vs.
The Gastonia Cotton Mfg. Co., Defendant. } Complaint.

The plaintiff complaining of the defendant alleges:

I. That the plaintiff is a corporation created and duly organized under the laws of the State of Mississippi, and is a citizen and resident of the said State of Mississippi, and the defendant is a corporation created and duly organized under the laws of the State of North Carolina, and is a citizen and resident of said State of North Carolina, in the Western District thereof.

II. That during the months of October, November and December, in the year 1899, and in the months of January, June, October, November and December, in the year 1900, the plaintiff sold and delivered to the defendant 2,483 bales of cotton, for which the de-

4 fendant agreed to pay the plaintiff the sum of $111,365.59, together with 6 per cent. interest after thirty days from the date of each invoice of cotton so delivered, a detailed statement showing the date of each invoice, the number of bales of cotton and the amounts due thereon is set forth *forth* in the exhibit herewith filed, marked Exhibit "A."

III. That there has been paid on the said indebtedness the sum of $75,967.60, as shown by Exhibit "B.," herewith filed and made a part of this complaint.

IV. That there is still due the plaintiff on said indebtedness the sum of $35,397.99, with interest at the rate of 6 per cent. upon the deferred payments after thirty days from the date of the respective invoices.

Wherefore the plaintiff demands judgement against the defendant for the sum of $35,397.99 with interest thereon at the rate of 6 per cent. as stated in the complaint, and for the costs of this action to be taxed by the Clerk of this Court.

MURRAY F. SMITH,
JONES & TILLET,
Attorneys for Plaintiff.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

This day personally appeared before me this day T. G. Birchett, Jr., a notary public, in and for the City of Vicksburg, County of Warren and State of Mississipppi, W. L. Wells, who, being by me duly sworn, says that he is an officer of the plaintiff, to-wit, its President: that he has read the foregoing complaint and the sam*E* is true of his own knowledge except as to those matters therein stated upon information and belief, and as to those matters, he believes it to be true.

W. L. WELLS.

Sworn to and subscribed before me this 5th day of October, 1901. Witness my hand and notarial seal.

(NOTARIAL SEAL.) G. T. BIRCHETT, JR.,
Notary Public.

5

"EXHIBIT A."

Gastonia Cotton Manufacturing Company,

in account with

W. L. Wells Company.

1899.								
Octo.	19	To invoice	100	B-C	to N-Y			$3,884.32
"	20	" "	56	"	"		$2,005.04	
"	20	" "	123	"	" Leo-N & Ale-X	5,328.40		$7,333.44
"	21	" "	100	"	" N-Y			4,011.04
"	23	" "	100	"	" Pi-K			3,971.60
"	28	" "	100	"	" to N-Y		4,082.08	
Nov.	1	" "	96	"	" Bla-K			3,708.41
"	2	" "	50	"	" to N-Y			2,121.20
"	22	" "	86	"	" Leo-N			3,405.44
"	24	" "	50	"	" Zur-I & AE-T			1,781.80
"	28	" "	100	"	" to N-Y		4,082.08	
"	28	" "	100	"	" to N-Y		4,004.16	8,086.24
Dec.	2	" "	86	"	" Rai-N			3,313.61
"	5	" "	92	"	" Ben-D			3,370.37
"	13	" "	100	"	" Nat-I			3,892.76
"	22	" "	107	"	" Iro-N			4,023.94
1900								
Jany.	11	" "	50	"	" Tap-E			1,961.93
"	27	" "	55	"	" Acm-E			2,338.77
June	22	" "	64	"	" Dod			3,283.18
Octo.	2	To invoice	50	B-C	Lin-E			2,814.13
"	11	" "	50	Edn-A				2,764.19
"	20	" "	50	"	" Hob-S			2,660.67
"	25	" "	1000	"	" Jeso-O			5,263.89
"	29	" "	50	"	" Juli-O			2,648.60
Nov.	5	" "	100	"	" Jol-I			5,193.92
"	15	" "	50	"	" Jile-I			2,637.84
"	21	" "	100	"	" " Jit-L			5,190.82
"	24	" "	100	"	" Luk-E			5,276.24
"	26	" "	100	"	" Fug-O		$4,862.35	
"	26	" "	100	"	" Pol-K		4,954.48	9,816.83
Dec.	4	" "	24	"	" Act			1,229.13
"	18	" "	100	"	" Mbr & Moh			5,381.28
Total			2,483					$111,365.59

6

"EXHIBIT B."

Gastonia Cotton Manufacturing Company,
in account with
W. L. Wells Company.

CREDITS.

1899		
Nov. 17,	By cash remittance	$9,212.72
Dec. 6,	" " "	9,987.68
1900.		
Jan. 13,	" " "	8,086.24
" 22,	" " "	3,708.41
Mch. 12,	" " "	7,308.44
June 5,	" " " ($16,000 Recd 1-2 crd Avon Mills)	8,000.00
" 22,	" " " ($10,000 Recd. 1-2 crd Avon Mills)	5,000.00
Aug. 3,	" " "	3,283.18
Oct. 11,	" " "	2,814.13
" 29,	" " "	5,424.86
Nov. 20,	" overcharge freight 50 B @ Ail-I	22.50
Nov. 21,	" cash remittance ($25,000 Recd. $15,000 crd Avon Mills)	10,000.00
Dec. 3,	" " "	3,106.41
1901.		
Jan. 8,	" Overcharge freight from West Point	13.03
	Balance	35,397.99
		$111,365.59

To balance due $35,397.99

Endorsement: Filed in this office, Oct. 7, 1901.
H. C. COWLES, Clerk.

ORDER EXTENDING TIME TO ANSWER.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF NORTH CAROLINA, CIRCUIT COURT, CHARLOTTE.

No. 384.

W. L. Wells Company,
Plaintiff,
versus
Gastonia Cotton Manufacturing Company,
Defendant.
} Order.

In the above entitled case, upon motion of Burwell, Walker & Cansler, Attorneys for the Defendant, it is ordered by the court that

7 the time for filing the answer to the complaint be, and the same is, hereby extended until February 1, 1902, as of this term.

JAS. E. BOYD,
United States Judge.

Endorsement:

Filed in this office, Dec. 9, 1901.

H. C. COWLES, Clerk.

ANSWER.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF NORTH CAROLINA, CIRCUIT COURT, CHARLOTTE.

W. L. Wells Company, Plaintiff, *versus* Gastonia Cotton Manufacturing Company, Defendant. } Answer.

The defendant answers the complaint filed in this action and says:

1. It admits that defendant is a corporation duly organized under the laws of North Carolina, and is a citizen and resident of that State. It says it has no knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first section of the complaint, to-wit, that the plaintiff is a corporation organized under the laws of the State of Mississippi and a citizen and resident of that State, and, therefore, it denies the said allegation.

2. Answering the allegations contained in the second section of the complaint, the defendant says that, during the months of October, November and December in the year 1898, the defendant, by its duly authorized officers and agent, agreed to purchase from one W. L. Wells the number of bales of cotton set out in Exhibit "A" of the complaint, and said therein to have been sent to this defendant by the plaintiff during those months. It admits that its duly authorized officers and agents promised said Wells to account for said cot-on at the prices set out in said exhibit, and it further admits that the weights of the said bales of cotton are therein correctly stated. It further admits that during the months of January and June of the year 1899, the defendant, through its duly author-

8 ized agent, agreed to purchase of the said Wells other bales of cotton, as set out in "Exhibit A" and to account thereofr at a price and upon terms agreed upon between the said Wells and defendant's agent. It further admits that the weights of said bales of cotton are correctly stated on said exhibit. It further admits that, during the *the* months of October, November and December, 1900, through its authorized *a*agent, it agreed to purchase of the said Wells the bales of cotton set out on said exhibit, and the said ba*e*ls of cotton were duly received by the -fendant on the invoices from a corporation or partnership styled the W. L. Wells Company.

3. Answering the allegations contained in the third section of the complaint, the defendant says that there has been paid by it, on account of the cotton purchased by it as aforesaid, a much larger sum than $75,967.60, to-wit the sum of $95,828.11. The defendant admits that it owes, on account of said cotton, a balance of $7,285.46, the same being the difference between the sum which it agreed to pay for all of said cotton, and the amount paid by it under the contract of purchase.

4. The defendant says that the allegation contained in the fourth section of the complaint is not true.

And further answering the complaint this defendant says that, at the time of the agreements to purchase the cotton described in the complaint, the officers and agents of this defendant, who had the management of its affairs, were John F. Love and Geo. A. Gray, and that these individuals were largely interested in the promotion of a manufacturing plant to be established near the t*w*on of Gastonia, where the defendant's mill was situated, and W. L. Wells, in order to secure the sale of said cotton to the defendant, agreed with the said John F. Love that, if he, as agent of the defendant, would agree to purchase cotton from the said Wells, or from the partnership or corporation represented by him, a portion of the purchase money due for the said cotton might be invested in the stock of the said proposed manufacturing plant, which was known as the Loray Mills, and defendant avers that the said cotton was purchased by its agent and manager with the express understanding that the defendant should use a part of the purchase money in that way, and defendant says that, pursuant to this understanding and agreement, a full settlement was made between it and the plaintiff on August 3rd, 1900, and all the cotton shipped by the plaintiff and received by the defendant under the said contract with the said Wells was fully accounted for on that day, in s*r*ict ac-ordance with the terms of the contract.

And defendant further says that another settlement was made on December 3rd, 1900, and all that was due on account of the cotton

9 to that date was fully accounted for in strict ac-ordance with the terms of the said contract.

That, afterwards, to-wit, in January, 1901, the defendant's agent, according to the terms of the agreement, paid out, on account of said cotton, to the manufacturing enterprise known as the Loray Mills, all that was then due on account of said cotton, except the sum of $688.08, and it admits that thereafter, it received the cotton invoiced to it on December 4, 1900, twenty-four bales, for which it owes $1,229.13; and it further admits that it received the cotton invoiced to it on December 18, 1900, one hundred bales, and that it owes therefor the sum of $5,381.28, less $13.03, a credit to which it is entitled on account of freight paid by it, and it admits that the total of these items, to-wit, the sum of $7,285.46, is due on account of the purchase of said cotton, and it says that it is ready and willing to pay the same in full settlement for the said cotton under the contract made by its agent with the said Wells.

The defendant denies that it owes the plaintiff anything except the said balance of $7,285.46.

BURWELL, WALKER & CANSLER.

NORTH CAROLINA, }
Gaston County. }

John F. Love, being duly sworn, says that he is an officer of the defendant corporation, to-wit, its treasurer, and that the above answer is true of his own knowledge, except as to those matters therein stated on information and belief, and, as to those matters, he believes it to be true.

JOHN F. LOVE.

Sworn to and subscribed before me this the 30th day of January, 1902.

(NOTARIAL SEAL.) W. T. RANKIN,
Notary Public.

Endorsement:

Filed in this office February 1st, 1902.

H. C. COWLES, Clerk.

And the said cause being reached at the said June Term, 1902, of our said Circuit Court of the United States for said District at

10 Charlotte, N. C. Honorable Jas. E. Boyd, Judge of the Western District of North Carolina, being present, presiding and holding said Court, and coming on to be heard on June 18th, 1902, during said term, the following further proceedings are had therein, to-wit:

JURY.

No. 384 and 385.

W. L. Wells Company,
versus
Gastonia Cotton Manufacturing Company, and Avon Mills } Summons at law.

By consent; it is agreed and ordered that the causes be consolidated for trial. The case is called for trial. The issues are submitted and joined; and the hearing of the cause commenced.

It is thereupon ordered that a jury of good and lawful men come to try the issues joined between the parties.

Thereupon, the following jurors, to-wit: Geo. Sadler, Rich'd Lewis, Jno. A. Shuford, G. L. Rea, J. M. Runyans, E. A. Arledge, Henry Harwood, Frank Daniels, E. W. Thomas, W. R. Cox, A. L. Parker and W. H. Helms, are chosen, tried and sworn to speak the truth of and concerning the issues between the parties.

The jury retire while legal questions are being argued before the Court.

Issues and verdict as to Gastonia Cotton Manufacturing Co.

The jury return into Court, and separate issues being submitted to them, the jurors aforesaid, in open court, and under the instructions of the Court, return their verdict and say that they find the issues submitted to them as to the Gastonia Cotton Manufacturing Company in favor of the plaintiff, as follows, to-wit:

1. Is plaintiff a corporation as alleged in the complaint?

Answer: Yes.

2. Is plaintiff a citizen and resident of the State of Mississippi?

Answer: Yes.

3. What amount, if any, is plaintiff entitled to recover of defendant?

Answer: ($39,313.88) Thirty-nine thousand, three hundred and

11 thirteen dollars and eighty-eight cents, with interest on $35,397.99, from June 9th, 1902.

The defendant excepts. Exceptions allowed while the jury are still at the bar. Ordered that ninety (90) days be allowed defendant to file bill of exceptions.

JUDGMENT.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF NORTH CAROLINA, IN CIRCUIT COURT AT CHARLOTTE, JUNE TERM, 1902.

No. 384.

W. L. Wells Company,
Plaintiff,
versus
Gastonia Cotton Manufacturing Company,
Defendant.

This cause coming on to be heard upon the pleadings and verdict of the jury, and the jury having found all the issues in favor of the plaintiff,

Now, therefore, upon motion of Murray F. Smith and Jones & Tillet, attorneys for the plaintiff, it is adjudged and decreed by the Court that the plaintiff, W. L. Wells Company, recover of the defendant, Gastonia Cotton Manufacturing Company, the sum of thirty-nine thousand three hundred and thirteen and 88-100 dollars, together with interest on the principal sum, to-wit, the sum of thirty-five thousand, three hundred and ninety-seven and 99-100 dollars until paid and the costs of the action to be taxed by the clerk of this court.

JAS. E. BOYD,
U. S. Judge.

Endorsement:

Filed in this office June 20th, 1902.

H. C. COWLES, Clerk.

12 **ORDER AS TO CONSOLIDATION AND SUPERSEDEAS BONDS TO BE GIVEN AND AS TO ONLY ONE WRIT OF ERROR TO BE SUED OUT.**

UNITED STATES OF AMERICA IN THE CIRCUIT COURT FOR THE FOURTH CIRCUIT, WESTERN DISTRICT OF NORTH CAROLINA.

No. 385.

W. L. Wells Company
Plaintiff,
versus
Avon Mills,
Defendant.

In this cause, it appearing that this action and another case of like kind, entitled W. L. Wells Company vs. Gastonia Cotton Manufacturing Company, to recover the price of cotton sold to the said defendants during the course of the same transaction, were, by consent of the parties and the order of the Court, consolidated merely for the purpose of more conveniently trying the same, a separate verdict and judgement having been rendered and entered in each case, and it now appearing that by consent of counsel for the Avon Mills and the Gastonia Cotton Manufacturing Company, it has been agreed that a writ of error shall be sued out in the case of Gastonia Cotton Manufacturing Company alone, and that the verdict, judgement and other proceedings in the said case against the Avon Mills, in the above entitled action shall abide the result in the case of W. L. Wells Company vs. the Gastonia Cotton Manufacturing Company in all respects, the same as if a writ of error had been sued out in each case, the two cases being alike in all essential features, and that whatever orders or judgments are entered in the case of W. L. Wells Company vs. Gastonia Cotton Manufacturing Company shall also be entered in the above entitled action against the Avon Mills, defendant: it being understood and agreed that the said Avon Mills shall give a supersedeas bond to be approved by the Judge in like manner as if it were intended to prosecute a writ of error, and, that the plaintiff shall have like right of action and other rights upon the said supersedeas bond, as it may have upon the supersedeas bond given in the said action against the Gastonia Cotton Manufacturing Company.

13 By consent of the parties the foregoing agreement is entered as a rule of Court in the above entitled action.

JAS. E. BOYD,
United States Judge.

By consent,

JONES & TILLETT,
Attorneys for W. L. Wells Company.
CHAS. PRICE,
BURWELL, WALKER & CANSLER,
Attorneys for Avon Mills.

The undersigned sureties upon the supersedeas bond of the Avon Mills in the above antitled action, hereby give their consent to the agreement of counsel above set forth and the order of the Court.

J. WHITE WARE,
JAS. A. PAGE,
JAS. A. PAGE,
J. WHITE WARE,
GEO. A. GRAY,
JNO. F. LOVE,
R. C. G. LOVE,
EDGAR LOVE.

Endorsement:

Filed in this office June 18th, 1902.

H. C. COWLES, Clerk.

ORDER OF THE COURT ALLOWING 90 DAYS TO PREPARE AND FILE BILL OF EXCEPTIONS.

The defendant, having tendered exceptions to the ruling of the Court, in the presence of and before the retirement of the jury, and having duly excepted to the judgement, it is ordered by consent of counsel, that defendant be allowed ninety days after the said 20th day of June, 1902, to prepare its bill of exceptions for the approval and signature and seal of the Court, and it is further ordered by consent of counsel that the penalty of the supersedeas bond be fixed at Forty-five Thousand Dollars.

And, afterwards, to-wit, on the 28th day of August, 1902, the defendant, the Gastonia Cotton Manufacturing Company, by its attorneys, Chas. Price, Esq., and Burwell, Walker & Cansler, filed in the

14 office of the Clerk of said Court, its Bills of Exceptions, which have been approved and signed by Hon. Jas. E. Boyd, who presided as Circuit Judge at the trial of said case, which Bill of Exceptions is in words and figures following:

Endorsement:

Filed in this Office June 20th, 1902.

H. C. COWLES, Clerk.

AGREEMENT OF COUNSEL.

UNITED STATES OF AMERICA, IN THE CIRCUIT COURT FOR THE FOURTH CIRCUIT, WESTERN DISTRICT OF NORTH CAROLINA.

W. L. Wells Company, Plaintiff, *versus* Gastonia Cotton Manufacturing Company, Defendant. } At Law.

This case, W. L. Wells Company vs. Gastonia Cotton Manufacturing Company, and another case of like kind entitled W. L. Wells Company vs. Avon Mills, to recover the price of cotton sold to it during the course of the same transaction, were, by consent of the parties and the order of the Court, consolidated, merely for the purpose of more conveniently trying the same, and a separate verdict and judgment was entered and rendered in each case.

It is now agreed that but one writ of error shall be taken out in the case of W. L. Wells Company vs. Gastonia Cotton Manufacturing Company, and that the judgment and verdict and other proceedings in the case of W. L. Wells Company vs. Avon Mills shall abide the result in the case of W. L. Wells Company vs. Gastonia Cotton Manufacturing Company in all respects, the same as if a writ of error had been sued out in each case, all of which will more fully appear by reference to the agreement of the parties, which has been entered as a rule of Court in the case entitled W. L. Wells Company, Plaintiffs, vs. Avon Mills, Defendant.

JONES & TILLETT,
Attorneys for W. L. Wells Company.
CHARLES PRICE,
BURWELL, WALKER & CANSLER,
Attys. for Gastonia Cotton Mfg. Co.

15 Endorsement:

Filed in this Office, Aug. 28th, 1902.

H. C. COWLES, Clerk.

BILL OF EXCEPTIONS.

UNITED STATES OF AMERICA, CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT AND WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE, JUNE TERM, 1902.

Gastonia Cotton Manufacturing Company, Plaintiff in Error,
versus
Wells Company, Defendants in Error. } At Law.

Be it remembered that, afterwards, on the 18th day of June, 1902, at the said term of the said Court, held in Charlotte, in and for the Western District of North Carolina, before His Honor, Jas. E. Boyd, Circuit Judge, the issues rasied by the pleadings in the above entitled cause between the said parties, as appears of record, came on to be tried before the said Judge and a jury, the plaintiffs in the Circuit Court, to-wit, the said Wells Company, being represented by Hamilton C. Jones and Chas. W. Tillett, and Murray Smith, as attorneys, and the defendant, the said Gastonia Cotton Manufacturing Company, by Chas. Price, and Armistead Burwell, Platt D. Walker and Edwin T. Cansler, of the firm of Burwell, Walker & Cansler, as attorneys:

The issues as settled by the Court were as follows:

1. Is plaintiff a corporation as alleged in complaint?
2. Is plaintiff a citizen or resident of the State of Mississippi?
3. What amount, if any, if plaintiff entitled to recover of defendant?

Before the introduction of any evidence, His Honor called upon the parties for a statement of their contentions, and thereupon the plaintiff's counsel stated that the plaintiff claimed the sum of thirty-five thousand, three hundred and ninety-seven and 99-100 ($35,397.99) dollars as due by the defendant for cotton sold, as set out in the complaint, together with interest at the rate of six per cent. 30 days after the date of the invoices. The defendant's counsel

16 stated that the defendant admitted that it had received from a firm or corporation called the W. L. Wells Company, the cotton, as set forth in the complaint, and that the charges for the same were correct, as stated in the complaint, but that defendant contended, first, that the plaintiff was not a corporation, and, second, that there had been paid on this claim, and the claim of the W. L. Wells Company against the Avon Mills, the sum of fifty thousand ($50,000) dollars, and the defendants admitted owing the balance to the firm or corporation known as the W. L. Wells Company.

EVIDENCE FOR PLAINTIFF.

The plaintiffs first offered in evidence the *origal* charter certified to under the Great Seal of the State of Mississippi, marked Exhibit 1) (p. 40).

Plaintiffs offered in evidence copy of a bill certified to under the Acts of Congress by the Chancery Clerk of Warren County in which Vicksburg is situated. Marked Exhibit 2 (p. 42 to 45).

J. T. WELLS INTRODUCED BY PLAINTIFF.

Q. Where do you live? A. Vicksburg, Miss.

Q. What is your present business? A. Cotton buyer.

Q. State whether or not you had any connection with the W. L. Wells Co., if so, what? A. I did, I was the Secretary and Treasurer of the W. L. Wells Co.

Q. Did you have any other connection? A. I was a stock holder and director.

Q. Please examine this book and state what it is. A. This book is a minute book of the W. L. Wells Co.

(The Minute Book of the W. L. Wells Company was offered in evidence by the plaintiff Marked Exhibit 3) (p. 45).

Q. Who was the president of the W. L. Wells Co.?

(Objection by defendant; objection overruled; exception.)

A. W. L. Wells.

Q. Who was vice-president? A. George Butterworth.

Q. Who was secretary and treasurer? A. I was.

Q. When did the W. L. Wells Co. begin doing business with the Avon and Gastonia Mills? A. Early part of the season of 1898, Sept. or Oct.

Q. When you use the word season please state to the jury what that means? A. The cotton season is from the first of Sept. until

17 the cotton is all sold in the spring; between Sept. of fall and April of spring.

Q. You commenced in the season of '98 when? A. Sept. 1st.

Q. When did it end? A. Aug. 31st, 1899.

Q. Where was the place of business of the W. L. Wells Co.? A. Vicksburg, Miss., Warren County.

Q. You did business with them of what character during the season of '98 and '99? A. We shipped them a considerable amount of cotton charged up on our books.

Q. What did they do? A. They remitted us from time to time.

Q. How did the season of '98 and '99 wind up; was the account finally closed? A. Yes, sir, it was.

Q. How was the cotton billed out? A. It was billed on the W. L. Wells Co. invoices.

Q. To whom were the remittances made? A. W. L. Wells Co.

Q. Whose books were they credited on? A. W. L. Wells Co. books.

Q. Did you do any business with them during the season of '99 and 1900. A. We did.

Q. How did that season wind up? A. They owed us a ledger balance.

Q. How were these invoices made out? A. On the regular invoices of the W. L. Wells Co.

Q. Were there any statements of accounts rendered from time to time? A. Yes, sir.

Q. In whose name were these written? A. W. L. Wells Co.

Q. How much is now due by the Gastonia Manufacturing Co. to the W. L. Wells Co? A. $35,397.99, exclusive of any interest.

Q. How much is due by the Avon Mills? A. $26,750.36 exclusive of interest.

Q. I notice that you have some books there; what are they? A. These are the account books kept by the W. L. Wells Co. The ledger and the cash book; they were kept by me.

Q. How were they kept? A. They were kept in due course of business.

Q. Did they show the state of accounts between W. L. Wells Co. and the Gastonia and Avon Companies. A. Yes, sir.

Q. Please give the pages of Gastonia Mill and Avon? A. Gastonia Manufacturing Co., pages 93, 94 and 95 in the ledger, The Avon Mills, pages 101 and 102. The other book is the cash book.

18 Q. Examine that and state what it is (counsel presented paper to witness.)? A. This is a statement of Avom Mills in account with W. L. Wells Co. from Oct. 23rd 1900 to Aug. 10th, 1901.

(This statement was offered in evidence by plaintiffs, Marked Exhibit 4 (p. 47).

(Like statement of Gastonia Manufacturing Company identified by witness and offered in evidence Marked Exhibit 5.)

—. Examine this paper? A. This is a statement of the Avon Mills in account with W. L. Wells Co., Oct. 17, 1899, to Aug. 18, 1900.

(This statement was offered in evidence by plaintiff, Marked Exhibit 6.)

(Like account with the Gastonia Mills offered in evidence and identified by witness, Marked Exhibit 7.)

Plaintiff's counsel then read in evidence letter of W. L. Wells Co., dated Feb. 7, 1900, to John F. Love, treasurer of the Mills Gastonia, N. C., enclosing a statement of account to Feb. 1st, 1900.

(The plaintiff here offered in evidence the statement of account mentioned in said letter) (p. 47).

Q. There was no objection made to that statement of account? A. No, sir.

(Plaintiff offered in evidence letter dated Feb. 9th, 1900, to Mr. Love from the W. L. Wells Co.) (p. 48).

(It is admitted that all the letters that W. L. Wells Co. wrote are written on this letter head.)

(Plaintiff offered in evidence telegram of March 6th, 1900, to Gastonia Manufacturing Co.) (p. 48).

(Plaintiff read in evidence telegram of John F. Love to W. L. Wells Co., of March 6th, 1900) (p. 49).

(Plaintiff read in evidence letter of W. L. Wells Co., of March 6th, 1900, to John F. Love, of Gastonia, N. C.) (p. 49).

19 (Plaintiff offered in evidence the statement there alluded to) (p. 50).

(Plaintiff read in evidence letter written April 2nd, 1900, to John F. Love) (50).

(Statement referred to in that letter offered in evidence) (51).

(Plaintiff read in evidence letter written May 7th, 1900, to John F. Love, Treasurer) (51).

(The statement referred to in that letter offered in evidence) (52).

Q. This statement of account I have just read in evidence, were there any objections made by the Gastonia or Avon Mills or by Mr. Love as Treasurer? A. No sir.

(Plaintiff read in evidence the original statement of July 1st, 1900) (53).

Q. Any objection made to that account? A. No sir.

(Plaintiff offered in evidence an account rendered Aug. 1st, 1900) (53).

Q. Any objection made to that statement. A. No, sir.

(Plaintiff read in evidence a statement rendered on Sept. 1st, 1900) (54).

Q. Any objection made to that statement? A. No, sir.

Q. As I understand you these defendants wound up the season of 1899 and 1900 with a balance due of how much? A. $12,691.67.

Q. That balance was due Sept. 1st, 1900? A. Yes, sir.

Q. That was the amount due by both companies. A. Yes, sir.

Q. How much of that $12,691.67 was due by Gastonia Manufacturing Co. A. $6,998.13; the amount due by the Gastonia Mills exclusive of interest was $5,901.38.

Q. How much was due by the Avon Mills? A. $4,098.62, exclusive of interest; the two amounted together to $10,000.00.

Q. I notice in this last statement of here rendered Sept. 1st, 1900, that you just make a statement of the balance due without stating separately which mill owes so much, etc.; what was your idea in doing that? A. We treated them as one in the accounts, they were

20 different in name only; we kept separate accounts on our books, but the payments all came through the same source and for that reason I consolidated them when I made interest on them and didn't keep the amount separately. However, that has been figured separately and has been charged to the respective accounts. That was only a matter of convenience for me.

Q. When Mr. Love would make you a remittance, how would that remittance be made, specifically for Avon and specifically for Gastonia Mills? A. Sometime it would and sometime it would not.

Q. Turn to your books and give an illustration of one of them given and how you disposed of it? A. For instance on June 5th, 1900, I received a check for $16,000.00; I credited $8,000.00 to Avon Mills and $8,000.00 to Gastonia Mills.

Q. How did you get that check? A. By mail.

Q. In these accounts which you have rendered I notice interest charged; upon what basis did you charge interest and what date. A. I calculated the interest from 30 days after the date the invoices were rendered; on these accounts while we were not shipping cotton, of course, they bore interest from the last date of rendering the statement.

Q. Did you get any objection to interest? A. No, sir.

(Plaintiff here offered in evidence statement of account rendered by W. L. Wells Co., the Gastonia Mfg. Co., showing balance due Aug. 15th, 1901; and a like statement showing the amount due by the Avon Mills, which was admitted to have been received by the defendant.)

Marked Exhibit 8 and 9 (p. 58).

Q. Please state if your books show any interest account or charges kept against John F. Love, Treasurer. A. Yes, sir, they do.

Q. What page is it on in your ledger? A. Page 291.

Q. How much interest does that show was due? A. $2,691.67 charged against John F. Love, Treasurer, up to Aug. 31st, 1900.

Q. From what date? A. Feb. 1st, 1900.

(Plaintiff introduced statement of account rendered Sept. 30, 1901) (p. 54).

Q. When was the capital stock subscribed by W. L. Wells, yourself and Mr. Butterworth paid in? A. Out of the profits of the first year's business.

Q. When? A. Early part of 1899.

21 CROSS EXAMINATION.

Q. Look at the books of the W. L. Wells Co. and tell me how much was due from the two mills on 31st of July, 1900, principal money. A. $19,206.30.

Q. I hand you a letter dated July 13th, 1900, look at that document and say whether it is copied in a letter book of the Wells Co.; if so, produce the letter book?

(Letter dated July 13th, 1900, of Wells to Love introduced in evidence by defendants and marked Exhibit A.; objection by plaintiffs; overruled; exception) (p. 58).

A. It appears to have been copied.

Q. In whose hand writing is it? A. W. L. Wells.

Q. In whose hand writing is the alteration made? A. I presume it is in his hand writing.

Q. Is that on a letter head of the W. L. Wells Co. A. Yes, sir.

Q. Came from the office of the company? A. Yes, sir.

(Letter read in evidence by defendant's counsel.)

Q. W. L. Wells was president of the Wells Co? A. Yes, sir.

Q. You were secretary and treasurer? A. Yes, sir.

Q. Mr. Butterworth was vice-president? A. Yes, sir.

Q. Mr. W. L. Wells is present in court today? A. Yes, sir.

Q. Look at this paper I hand you, pruported to be an invoice for 64 bales of cotton dated June 22nd, 1900, and say what it is. A. It is an invoice of 64 bales of cotton shipped to Gastonia, N. C.

(Invoice dated June 22nd, 1900, introduced in evidence and marked Exhibit B.) (p. 59).

Q. What was the price of cotton? A. 10 1-4 cents.

Q. How much did it amount to? A. $3,283.18.

Q. What figures and words are on that paper in the hand writing of Mr. Love? A. Account, $5,923.12; total, $9,206.30.

Q. I hand you a check dated Aug. 1st, 1900, drawn by John F. Love cashier on the Hanover National Bank of New York; look at this check and say when you received it, if you did receive it? A. I have it credited Aug. 3, 1900; I presume I received it that day (p. 59).

Q. Had you received that check when you marked that invoice paid? A. Yes, sir.

22 (Check dated Aug. 1, 1900, offered in evidence by the defendants, and marked Deft.'s Exhibit C.) (p. 59).

Q. Was the business of W. L. Wells Co. for the season of '98 and '99 fully settled; was the account between the defendants and the Wells Co. for the season '98 and '99 fully settled? A. Yes, sir, it was.

Q. You said in your direct examination that you sent to the defendant or J. F. Love, treasurer, the statement of the account dated Aug. 1st, 1900? A. I don't know whether I did or not.

Q. I hand you your statement purporting to have been made to the defendant company, dated Aug. 1st, 1900; was that statement sent? A. Yes, sir.

Q. Had you at the time you made that statement received $9,206.30? A. I had not.

Q. Did you make credit on your statement of Sept. 1st? Look at this paper purporting to be a statement of your company dated Sept. 1st, 1900, and say whether it was sent to the defendant company. A. It was.

Q. Did you say on your direct examination this morning that no objection was made to that statement? A. I did.

Q. Refresh your memory; do you still say that no objection was made to that statement? A. I don't recall any.

Q. Will you please produce a certain letter which you wrote to J. F. Love accompanying that statement and which was returned by him to your company? A. I recall this letter.

(Letter dated Sept. 1, 1900, offered in evidence by defendants and marked Deft.'s exhibit D.) (p. 59).

Q. Who wrote the letter. A. I did.

Q. In whose hand writing is the endorsement at the bottom of that page? A. It appears to be Mr. Love's.

Q. Received by you in the office at Vicksburg? A. Yes, sir.

Q. At the close of the season of "99 and 1900 these two mills owed your company $10,000.00 principle money, besides interest? A. Yes, sir.

Q. When did your company first demand that money and how was the demand made? A. I don't recall the date. We were writing them for money I should say in Dec. and January following.

Q. I will ask you if you can find among your records of the Wells Co. any demand made for this balance due on the season of '99 and 1900; if so, show it? A. That balance is included in our statements.

23 Q. Can you show on the records of the company any demand made for the balance due according to your statements of your company from these two defendants for the season of '99 and 1900? If so, please produce it, letter or telegram. A. I cannot for that identical amount.

Q. What do you mean by identical amount. A. I mean that particular amount.

Q. What was the first shipment made to the defendants or either of them in the fall of 1900 and after the close of the season of 1900 and 1901? A. Oct. 2, 1900.

Q. To which mill was that sent? A. Gastonia Manufacturing Co.

Q. How much was that invoice? A. $2,814.13.

Q. Has that been paid? A. Yes, sir.

—. Was that invoice receipted by you and returned to the company? A. I presume so; yes, sir.

Q. I hand you invoice for 50 bales of cotton, $2,814.13; has that invoice been paid, and when was it paid? A. This was marked paid by me on Oct. 11, 1900.

(Invoice dated Oct. 11, 1900, introduced in evidence by defendants and marked Deft.'s Exhibit E.) (p. 60.)

Q. The next invoice was Oct. 11, 1900 for $2,764.19? A. Yes, sir, this was receipted by me Oct. 29th, 1900.

(Exhibit F offered in evidence by defendants) (p. 60).

Q. The next invoice is dated Oct. 20th, 1900, for $2,660.67; look at that paper and tell when that invoice was paid? A. Marked paid Oct. 29th, 1900.

(Invoice dated Oct. 20th, 1900, offered in evidence by deft. and marked Defts.' Exhibit G.)

Q. The next invoice is Oct. 21st, for $3,283.48, paid December 3rd, 1900?

(Invoice dated Oct. 21st, introduced in evidence by deft. and marked Exhibit H.)

Q. The next invoice is dated Oct. 25th, for $5,263.89; is that invoice marked paid? A. Yes, sir; Dec. 3rd, 1900.

(Invoice dated Oct. 25th, offered in evidence by deft. and marked Exhibit J.) (p. 61).

24 Q. What is the next invoice? A. Dated Oct. 29th, for $2,640.60; paid Dec. 3rd, 1900.

(Invoice dated Oct. 29th, offered in evidence by defts. and marked Defts. Exhibit K.)

Q. What is the next invoice? A. Nov. 2nd, for $2,764.52; marked paid Dec. 3rd.

(Invoice dated Nov. 2nd and offered in evidence by defts. and marked Exhibit L.)

Q. What is the next invoice? A. The same date for $6,492.42.
Q. Was that invoice paid? A. Yes, sir; marked paid Dec. 3rd.

(This invoice was offered in evidence by defts. and marked Exhibit M.)

Q. What was the next invoice? A. Nov. 5th, for Gastonia Mills, for $5,153.92.
Q. When was that invoice paid? A. Marked paid Dec. 3rd.

(Exhibit N offered in evidence by defts.)

Q. What was the next invoice? A. Nov. 15th, Gastonia Mills, for $2,637.84.
Q. Have you on your books an invoice for Oct. 30th, 1900, for $3,281.87? A. There is one Oct. 31st for that amount.

(Invoice dated Oct. 31st, 1900, offered in evidence and marked Defts.' Exhibit O.)

Q. I hand you this invoice and ask you if it was paid? A. Yes, sir; Dec. 3rd, 1900.
Q. Look at your book and see if you have an account of the invoice of Oct. 30th, 1900, for $11,428.89? A. Yes, sir; marked paid Dec. 3rd.

(Invoice dated Oct. 30th offered in evidence by defendants and marked Exhibit P.)

Q. Look at Exhibit J. and see if the invoices we have mentioned amounts to $40,357.59? A. Yes, sir; that is right.
Q. Look at Exhibit J. and see what figures and words on that exhibit are in the hand writing of J. F. Love? A. Total, $40,357.59; less check, $25,000.00; enclosing $15,357.59 (p. 61).

25 Q. When John F. Love, treasurer, returned you that invoice with those words and figures written on it by himself, what did he send you with it? A. A New York exchange for $15,357.59.

Q. Is the check I hand you the check enclosed? A. Yes, sir.

(Exhibit Q. offered in evidence by defts.) (p. 61).

Q. Is the check I now hand you the check for $25,000.00 spoken of in Mr. Love's statement and that invoice? A. Yes, sir.

(Marked Defts.' Exhibit R.) (p. 61).

Q. Did that check enclosed with that voucher pay all the invoices that were then due, and some that were not due? A. It paid all the invoices of the Gastonia Manufacturing Co. up to and including Nov. 5th, 1900; all of the Avon Mill up to and including Nov. 2nd.

Q. That is, if I understand you, it covered all the invoices that were due 30 days after the dates you have given? A. Yes, sir.

Q. And the check enclosed with that invoice was received by you Dec. 3rd, 1900, in Vicksburg? A. Yes, sir.

Q. Look at this letter and state in whose hand-writing it is, and on what letter head it is written. A. This is W. L. Wells' hand-writing, and it is written on the company's letter head.

(Letter of Oct. 4th, 1900, in the hand-writing of W. L. Wells, signed by him, and on letter head of W. L. Wells Co., offered in evidence by defendants; objected to by plaintiffs; objection overruled exception.) Marked Exhibit S. (p. 62).

Q. In whose hand-writing is this letter? A. I should say it was in J. F. Love's. It is written on the letter head of the Gastonia Mills and Avon Mill and is addressed to W. L. Wells.

(Letter of Feb. 4th, 1901, hand-writing of J. F. Love, on letter head of Gastonia Manufacturing Co. and Avon Mill, and Loray Mills, addressed to W. L. Wells, Vicksburg, Miss., offered by defts.; objection by plaintiffs; objection overruled; exception.) Marked Deft.' Exhibit T. (p. 62).

Q. Who were the stockholders of the W. L. Wells Co. A. W. L. Wells, myself and George Butterworth.

Q. How much stock did W. L. Wells take? A. Ten shares. I took five shares and Mr. Butterworth five.

Q. Have you a book of subscription to stock? A. No, sir.

Q. Any account? A. No, sir.

26 Q. Did you ever issue any stock? A. No, sir.
Q. Ever have a seal? A. Yes, sir.
Q. Where is the seal? A. At Vicksburg.
Q. Where is the minute of adopting the seal? A. Didn't adopt it.
Q. How many meetings did you have? A. Several.
Q. Where? A. At Vicksburg.
Q. Who was present? A. W. L. Wells and I, and other times W. L. Wells and myself and Mr. Butterworth.
Q. Where are the proceedings of these meetings? A. We didn't keep them, no record of them.
Q. How many shares did you subscribe for? A. Five shares, amounting to $2,500.00.
Q. Did you pay for them? A. Yes, sir; out of my profits of the first year.
Q. Where is it charged on the books? A. It is not charged on the books.
Q. Any check? A. No, sir.
Q. How was it paid? A. My part of the profits of the concern.
Q. If it is not charged it has never been paid? A. Yes, sir, it has.
Q. It was paid from the profits of the first year? Is that the best answer you can make; how much did you pay? A. I appropriated that much, $2,500.
Q. Show the entry on the book? A. There is no entry, it is the profits of the concern.
Q. Where is the evidence that you paid it? A. I have offered as full explanation as I can.
Q. Where is the evidence of the profits? A. On the books.
Q. Show them on the books? A. It would take some time to get a trial balance of the books. If you want it I can produce it in court in the morning.
Q. When did you pay for the stock? A. Out of the profits of the first year.
Q. If you didn't do that you have never paid for it? A. No, sir.
Q. When did Mr. Butterworth pay for it? A. In the same way I did.
Q. How did Mr. W. L. Wells? A. In the same manner.
Q. Where is it charged to him? A. It is not charged to him.
Q. No stock ledger or certificate? A. No, sir.
Q. No record of any meeting except what has been produced; in evidence? A. That is all.
Q. Who were present at these meetings? A. W. L. Wells and myself.

27 Q. Any dividends declared? A. No, sir.

Q. You a member of that company now? A. Yes, sir.

Q. How much stock? A. $2,500.00.

Q. Is Mr. Butterworth a member? A. Yes, sir.

Q. Any other connection with the company? A. He is a director and officer, vice-president.

Q. Is he engaged in any other business now? A. Yes, sir; cotton buying business. Under the name of G. Butterworth and Co.

Q. Does he stay in the office of the company? A. No, sir.

Q. What is your business? A. Cotton buyer.

Q. Under what name? A. Luckett and Wells.

Q. What are you in connection with the W. L. Wells Co.? A. Sec. and treasurer.

Q. That is Wells Co. is doing business under the name of Luckett & Wells? A. No, sir; W. L. Wells Co. is not in active business now.

Q. Who is W. L. Wells & Co.? A. W. L. Wells, I presume.

Q. Who was it in 1899? A. W. L. Wells, T. J. Wells and Mr. Butterworth, under the name of W. L. Wells Co.

Q. Who carries on the business of W. L. Wells Co. now? A. We haven't had a meeting recently.

Q. Who is W. L. Wells & Co.? A. W. L. Wells is the only member of the Company I know.

Q. I understood you to say yesterday that W. L. Wells conducted what business prior to the supposed organization of W. L. Wells Co. the company of W. L. Wells Company, and didn't I also understand you to say after the W. L. Wells Co. ceased to operate the cotton business W. L. Wells succeeded to the business under the name of W. L. Wells & Co., and is conducting that business now? A. Yes, sir; he is conducting now a cotton business under the name of W. L. Wells & Co.

Q. Did he succeed W. L. Wells Co.? A. I don't know.

Q. He organized a different business? A. He began business under the name of W. L. Wells & Co. It was the same nature of business.

Q. Used same stationery? A. I presume he does; I don't know.

Q. Same clientage? A Partly, I think.

Q. What connection did you have with the W. L. Wells & Co. firm that preceded the so-called W. L. Wells Co. Corporation? A. None at all.

Q. What connection have you with the present firm of W. L. Wells & Co.? A. None whatever.

Q. What connection did Mr. Butterworth have with the old firm

28 of W. L. Wells & Co.? A. He was an employee of the company previous to the incorporation of the W. L. Wells Co.

Q. At what point did he reside? A. Yazoo City, Miss.

Q. Where did he reside while the business was conducted under the name of W. L. Wells Co.? A. Same place.

Q. Who resided in Vicksburg of the stockholders of the W. L. Wells Co.? A. W. L. Wells and I.

Q. Did that Company have any by-laws? A. No, sir.

Q. Did Mr. Butterworth ever attend a meeting of the stock holders or directors of that company? A. He did.

Q. When? A. From time to time. I don't recall the dates.

Q. Can't you recall one date? A. No, sir.

Q. Can you tell where that meeting was held? A. In the office of W. L. Wells Co., Vicksburg.

Q. Whose office is that now? A. W. L. Wells & Co.

Q. Who has possession of the W. L. Wells Co. books? A. In the safe of the W. L. Wells Co.

Q. Is that safe used by the W. L. Wells & Co.? A. Yes, sir.

Q. What became of the assets of the W. L. Wells Co.? A. Principally in debts.

Q. Who has these debts? A. The company has them.

Q. Where are the evidences of them? A. On the books here.

Q. In whose possession are they in Vicksburg? A. In the safe of W. L. Wells Co.

Q. Who has charge of the collection of these assets? A. The company.

Q. Through whom? A. Either one of the officers or directors.

Q. Have you any charge of that business? A. Yes, sir.

Q. What charge? A. I collect and receipt for any debts due the concern.

Q. I will ask you as a matter of fact what have you been in connection with the assets of the W. L. Wells *C.* since that corporation ceased to do business, and W. L. Wells & Co. assumed the management of it? A. They have not assumed management of it; I have no connection with W. L. Wells & Co.

(Plaintiff here objected to all of this testimony; objection overruled; testimony admitted; exceptions.)

Q. I understood you to say yesterday that you had put nothing in the W. L. Wells Co.? A. I haven't paid cash in there.

29 Q. How much have you taken out of W. L. Wells Co., according to your books? A. $10,217.55.

Q. How long did the company operate? A. Three years.

Q. How much did Mr. Butterworth put into the company? A. He didn't put in any cash.

Q. Did you or he put into it any property? A. No, sir.

Q. Who did furnish all the capital of the W. L. Wells Co.? A. There was absolutely no capital to start with.

Q. Whose credit maintained the business of the W. L. Wells Co.? A. The credit of the stockholders.

Q. Your own for instance? A. Yes, sir.

Q. What was your financial condition in the years during which this company operated? A. My financial ability was rather limited.

Q. How much were you worth over and above exemptions allowed by the State of Miss.? A. I don't suppose I was worth anything.

—. Do you know the financial standing of Mr. Butterworth during those years? A. No, sir.

Q. Do you know the financial standing of your brother during those years? A. Yes, sir; to an extent. He was a man of considerable means.

Q. How much was he estimated to be worth? A I don't know.

Q. I will ask you if he was not reputed to be worth from 150 to 300 thousand dollars? A. I presume he was.

Q. You don't know the general reputation of Mr. Butterworth's financial standing? A. I know in a general way; he was a man of limited circumstances.

Q. How limited? A. I don't know.

Q. Don't you think from his general reputation he was worth nothing over and above his exemptions in property? A. I don't know, but I think not.

Q. How much, according to the books, did Mr. Butterworth draw out from the Wells Co.? A. $9,022.65.

Q. What was your salary as secretary and treasurer? A. We drew no salaries.

Q. What was your compensation to be? A. One-fourth of the net profits.

Q. What was the salary of the vice-president? A. Nothing.

Q. What was his compensation to be? A. One-fourth of the profits.

Q. What was the compensation of the president? A. Nothing.

Q. What was he to receive? A. He was to receive his proportion of the profits.

30 Q. Was he allowed interest on the capital which he furnished the company? A. No, sir; he didn't furnish any capital; he loaned them some money.

Q. Did he furnish any credit? A. Yes, sir; he furnished most of it.

Q. Won't you say he did all of it? A. No, sir.

Q. Who did, if you and Mr. Butterworth were insolvent? A. We had a reputation of being honest.

Q. I will ask you if Mr. W. L. Wells was not the head of the concern and all of the W. L. Wells Co.? A. No, sir; he was not.

Q. In what particular was he not? A. He didn't have the entire management of it and he didn't furnish everything.

Q. What didn't he have controll of? A. He didn't have the entire controll of anything.

Q. What did he not have controll of? A. The making of contracts, the selling of cotton and everything else.

Q. Didn't he generally make the contracts? A. He did some time.

Q. Did you travel at all for the company? A. No, sir.

Q. Did Butterworth ever travel for the company? A. He did in the country to buy cotton.

Q. Who transacted all the business of the Wells Co. in North Carolina? A. W. L. Wells.

Q. You had nothing to do with it? A. No, sir.

Q. Nor Butterworth? A. No, sir.

Q. Your business was simply to receive the money and pay it out as W. L. Wells directed it? A. No, sir.

Q. Under whose direction did you pay it out? A. Under the direction of a consultation between us. We advised as to the policy of the business.

Q. You and who? A. W. L. Wells and I.

Q. Did you advise about the policy of the business in North Carolina? A. Yes, sir.

Q. When? A. From time to time.

Q. In the meeting of the directors? A. Yes, sir; we might call a meeting of the directors; W. L. Wells and I. We were the directors and officers and conducted the business.

Q. You kept up with the business of the company? A. Yes, sir.

Q. Did you ever refuse to ratify any act that W. L. Wells did for the company? A. No, sir.

Q. Did you ever object to any act that W. L. Wells did for the company? A. Yes, sir.

Q. Can you recall one act? A. No, sir.

Q. I understood you to say yesterday that when the check for $9,603.30 was received by you on Aug. 3rd, 1900, you returned the

31 same to Mr. Love, that is the invoice with which the check was enclosed? A. I returned to him an invoice of $3,283.18.

Q. His letter or his invoice enclosing that check passed between Gastonia and Vicksburg, your statement of Aug. 1st? A. I don't know.

Q. You mailed your statement 1st day of Aug.? A. Yes, sir; that is my recollection.

Q. The check enclosed was dated July 31st, Gastonia? A. That is my recollection.

Q. You received it Aug. 3rd? A. Yes, sir.

Q. I will ask you that according to the usual course of the mails, if a letter mailed in Gastonia 31st of July would not pass or cross or meet a letter coming from Vicksburg dated Aug. 1st? A. Yes, sir.

Q. Hence when Mr. Love received your statement, dated Aug. 1st, he received a statement that was sent from your company before you received the $9,630.00 check? A. Yes, sir.

Q. Then the receipt of that check would not be on that statement? A. No, sir.

Q. Then the statement of Sept. 1st, sent by you, contained a statement that you received $9,000.00? A. Yes, sir.

Q. And it showed a balance of $10,000.00 principal; $2,691.67 interest? A. Yes, sir.

Q. According to the books of your company that statement was intended to show that Gastonia Mills, represented by J. F. Love, treasurer, owed to the Wells Co. $10,000.00, principal money, and $2,691.67 interest? A. Yes, sir; the Gastonia and Avon Mills.

Q. You received no reply to that statement, the letter which you had written Mr. Love on the lower part of which he had written a statement crediting to the Loray Mills $10,000.00 stock Lorey. That was received by you as treasurer of the company? A. It was received.

Q. You were the only stockholder in the company in the office? A. Yes, sir.

Q. Where was Mr. W. L. Wells at that time? A. He was expected in Gastonia the day I received that.

Q. What notice representing the company did you ever make of that memorandum? A. Absolutely none.

Q. You filed it among the records of the company? A. I put it aside with the letters to be filed, and it was filed by the young man in the office.

Q. I understand you to say that your company or you for your company, never did send to either one of these mills, the Avon or Gastonia, or to J. F. Love, treasurer, any statement showing that these companies owed that $10,000.00 until the summer of 1901? A. I don't think I stated that.

32 Q. Will you say now whether you did or not? A. We were continually after them for money along say in Nov. and Dec., 1899.

Q. All the letters of the company are here? A. Yes, sir.

Q. I will ask you to produce any letter or statement sent by you, or by any member of the company, or any of its agents or servants or clerks between Sept., 1900, and Aug., 1901, showing an assertion on the part of your company that $10,000.00 was due; please produce all such letters and all such statements? A. In answer to this question, I produce the following letters: Letter dated Nov. 21st, 1900, copied in letter book No. 4, page 149 (p. 133).

Q. Who signed that? A. W. L. Wells, individually.

Q. What is the next *letter?* A. Jan. 2nd, 1901, book 4, page 288 (p. 137). The next letter is Aug. 12. 1901, book 4, page 653 (p. 57).

Q. Can you produce any other? A. That is all I can discover, looking through them hurriedly.

Q. Have you any reason to believe that there are any others that you haven't produced? A. I don't think there are; I don't know.

Q. On Nov. 19th, 1900, Mr. Love made you a general remittance of $25,000.00? A. Yes, sir.

Q. I will ask you on what invoice you applied that $25,000.00? A. No specific invoice.

Q. I will ask you if that $25,000.00, added to $15,357.59, the check of Dec. 1st, 1900, received by you Dec. 3, 1900, did not pay all the invoices of the full purchase, and haven't you on this examination admitted the payment of these by that fund? A. They paid all the invoices from Oct. 2nd, to Nov. 5th, inclusive, for Gastonia Cotton Mfg. Co., and Oct. 23rd to Nov. 2nd, inclusive, for Avon Mills.

Q. Then I understand you, Mr. Love, in the fall of 1900, made you a general remittance of $25,000.00 without instructions as to its application? A. Yes, sir; I applied it to his account.

Q. Isn't that a part of the $40,357.59 for which, on yesterday, I produced a voucher signed by you? A. Yes, sir.

Q. Refresh your memory and say what the $25,000.00 was applied to? A. $10,000.00 for Gastonia Manufacturing Co. and $15,000.00 for Avon Mill.

Q. Didn't you receipt this voucher? A. Yes, sir.

Q. How were they paid? A. By $25,000.00 check.

Q. Then no part of this general remittance was applied on the general balance of 1899 and 1900? A. Until we got these invoices and then they were marked paid.

Q. It was placed to the credit of Avon and Gastonia Mills and when Mr. Love sent the $40,357.59 invoices you marked the invoices

33 paid, because you had received the $25,000.00 check and returned them to Mr. Love? A. Yes, sir.

Q. How long have you kept books? What experience have you had in keeping books? A. Since 1884.

Q. I ask you now that according to the papers that have been exhibited to you what invoices did you apply the $25,000.00? A. All the invoices that are enumerated.

Q. I understood you to say yesterday that the $15,000.00 check settled all the invoices that were due on Dec. 31st, 1900? A. I stated that they settled all the invoices from Oct. 23rd, 1900, to Nov. 2nd, 1900, inclusive, of the Avon Mills, and from Oct. 2nd, 1900, to Nov. 5th, 1900, inclusive, for Gastonia Manufacturing Co.

Q. How much did the two mills owe your company according to your books, on Jan., 1900? A. The Gastonia Manufacturing Co. owed $35,397.99, and the Avon Mill owed $26,750.36.

Q. When was payment of that sum demanded by your company? A. I don't know, the letters will show.

Q. Can you produce the letters demanding payment? A. Here is a letter Jan. —st, 1901. This letter was signed by W. L. Wells Co. (p. 138).

(All the letters that we rely on as constituting a demand have been introduced in evidence.)

RE-DIRECT EXAMINATION.

Q. In what business were you engaged prior to the time you went in with the W. L. Wells Co.? A. I was book-keeper for the Delta Trust & Banking Co.

Q. Did you continue in their employment afterwards? A. No, sir.

Q. What business did you follow after you went in with the W. L. Wells Co.? A. I was book-keeper and office man.

Q. What other means did you have of making your livelihood? A. None.

Q. Where were your headquarters? A. W. L. Wells Co. office.

Q. What had Mr. Butterworth been doing prior to that time? A. Buying cotton.

Q. For whom? A. W. L. Wells & Co.

Q. After W. L. Wells Co. was formed what did he do? A. Bought cotton for the W. L. Wells Co.

Q. In whose name was the bank account of the W. L. Wells Co.? A. W. L. Wells Co.

Q. I believe I understood you to say that W. L. Wells paid

34 no money into the W. L. Wells Co. at the beginning? A. I did.

Q. You say Mr. W. L. Wells loaned the company $10,000.00? A. Yes, sir; he did.

Q. When was that loan made? A. Nov. 14th, 1898.

Q. When was it paid off? A. June 24th, 1899.

Q. How much did the W. L. Wells Co. make the first year? A. About $37,000.00 net profits.

Q. How much did you draw out the first year? A. $1,813.23.

Q. How much would your share of the net profits have been? A. Roughly stated, $9,250.00.

Q. How much did Mr. Butterworth draw out? A. $2,343.44.

Q. What salary were you getting when you went into the W. L. Wells Co.? A. I was making $1,800.00 a year.

Q. What salary was Mr. Butterworth getting when he went into that company? A. I don't know.

Q. How much did the W. L. Wells Co. make the second year? A. Something like 24 or 25 thousand dollars, that is my recollection.

Q. How much did you draw out the second year? A. $3,008.91.

Q. How much did Mr. Butterworth draw out? $3,741.55. -hese figures are subject to correction.

Q. How much did W. L. Wells draw out the first year? A. $238.81.

Q. How much the second? A. 12,136.81.

Q. How much did he draw out in all, including the $10,000.00? A. $11,082.24.

Q. Do you know whether or not W. L. Wells had a private bank account? A. Yes, sir; he did.

Q. About this remittance of $25,000.00 and $15,000.00, when you first got that $25,000.00, did you get any invoices? A. No, sir.

Q. Did you get any directions from Mr. Love how to apply it? A. No, sir.

Q. When did you get specific invoices? A. Dec. 3rd.

Q. When he remitted you that $15,000.00? A. Yes, sir.

Q. Then it was you receipted these invoices and sent them back to him? A. Yes, sir; that is correct.

Q. About this letter of Aug. 31st, upon which is this, "we wish to see your Mr. W. L. Wells about it when he comes to see us, etc." About what time did you receive that letter? A. About Sept. 5th.

Q. Where was Mr. W. L. Wells at that time? A. He was in New York, if I remember correctly.

35 Q. When did you first see him after that? A. Latter part of Sept., I think.

Q. What had become of this letter with this endorsement in the meantime? A. It had been filed away.

Q. Do you recollect whether or not you ever had any conversation with Mr. W. L. Wells about this endorsement after that date? A. No, sir; never.

Q. Did you know what the endorsement meant? A. No, sir.

Q. Did you ever hear of any subscription to stock of the Lorey Mills? A. No, sir.

Q. How does that balance stand on your books for the close of the season for 1899 and 1900, with the Avon and Gastonia Mills; is it closed or not? A. It is not closed. It is still open, both of them.

Q. When you commenced business in 1900 and 1901, what sort of account did you open; a new one or not? A. I left the accounts just as they appear and opened a new account on the following page of my ledger.

Q. Please explain why you adopted that method? A. My idea in doing so was to keep each year's business separate.

Q. There was a letter introduced here yesterday of Oct. 4th, 1900; state if you knew anything about that letter? A. No, sir; I knew nothing about this letter. (Witness read letter) (p. 62).

Q. Do you know anything about that subscription in there? A. Nothing whatever.

Q. There was a letter introduced of Feb. 2nd, 1901; did you know of that letter or the reception of it? A. No, sir (p. 62).

Q. I understood you to say that you did not receive that letter at that time? A. No, sir; I did not receive it.

Q. When did you first learn of the receipt of that letter? A. I don't recall. I think it was after the suit was brought.

Q. How did these letters come, addressed to the firm or to Mr. W. L. Wells? A. They were addressed to W. L. Wells and marked personal.

Q. Did you open any of these letters marked personal? A. No, sir.

Q. Did you know of their contents at all? A. No, sir.

Q. Where was Mr. Butterworth at that time? A. In Yazoo City, Miss.

Q. It seems that you did not, after Jan. 31st, 1901, and up to some time in August, make any demand about the amount due by the Gastonia and Avon Mills? Will you please state whether or not during that time this matter of amount was discussed by the company there in Vicksburg? A. Yes, sir; it was several times.

36 Q. Was there anything said about $50,000.00 having been paid on these subscriptions out of the fund of the company in these conversations? A. No, sir.

Q. Why was the reason of this delay? A. When I mentioned it to W. L. Wells he would say, never mind, don't worry, they are hard up, or something of that kind. Then we were selling them cotton for cash along in the spring of the year. They had owed us more than that at one time.

Q. When? A. I don't recall; for instance in Dec., '99, they owed us more than that; they owed us on the 31st of Dec., 1899, including Ozark, $108,902.06.

Q. How long were they paying that? A. The first remittance after that time was Jan. 13th.

Q. How much? A. $8,086.24 for Gastonia Mill, and $9,748.76 for Avon Mill.

Q. How much did Avon and Gastonia Mills owe on Jan. 31st, 1900? A. $95,269.02.

Q. In that season, after they commenced owing you so much, was there any change made in reference to the shipments from that time on? A. There was no change made that season.

Q. Ar-n't you mistaken about that? A. If there was I don't recall it.

Q. I call your attention to the letter of the 12th Feb.; refresh your memory (p. 121).

Letter was read by council.

A. My books would not have that if they were drawn on 30 days or 60 days time; they would appear on the cash book.

Q. Look at your invoice book, Feb. 16th, 1900. A. That would be handled as cash entirely, and not on my ledger. We did sell them on sight drafts after that time.

Q. Again I call your attention to the letter of Jan., 1900. A. We were selling them for cash then.

Q. In the season of 1900 and 1901, after they commenced to owe you so much money, what procedure did you adopt in reference to payments for cotton? A. The same plan.

Q. In the season of 1900, after they had accumulated this indebtedness of $95,000.00 to the firm, you sold them sight drafts and they made you remittances from time to time on old accounts on that $95,000.00? A. Yes, sir.

Q. The season ending 1901 you said Mr. W. L. Wells would say they were hard up and just let the matter stand? A. Yes, sir; that is correct.

Q. He would advise against pushing the account? A. Yes, sir.

37 Q. Your capital was $10,000.00; how did you buy this large amount of cotton and carry it? A. We carried it on credit.

Q. Where did you get the money from? A. Merchants' National Bank.

Q. How much did you all owe the bank? A. We some time owed them the first year as high as $60,000.00 and more; the year '98 and '99. During the year '99 and 1900 something over $166,000.00.

Q. When was this? A. Jan. 4th, 1900.

Q. How much did you owe the bank during the season of 1900 and 1901? A. The largest amount I should say was $128,000.00.

Q. Does the W. L. *Wels* Co. owe the bank anything now? A. Yes, sir.

Q. How much? A. $27,100.19, not including interest. The interest has not been charged since Oct. 31st, 1900, on our books.

Q. Does the W. L. Wells Co. owe any other debts besides that? A. Practically none.

Q. Who do the assets of that company belong to? A. Stockholders.

Q. In what proportion? A. In the proportion of which they hold stock.

Q. Is it that way now? A. There has never been any division.

Q. Has any formal or informal transfer of your stock or interest ever been made to any one? A. No, sir.

Q. Has any formal or informal transfer of Mr. Butterworth's stock ever been made? A. Not that I know of.

Q. You own yours and are claiming it to-day? A. Yes, sir.

Q. Something was asked you about your financial condition; how long have you lived in Vicksburg? A. Since 1886, 16 years.

Q. What business have you been engaged in up to this time? A. I was book-keeper for Willis Moore & Co., cotton factors.

Q. Is there any larger concern than they in Vicksburg? A. No, sir.

Q. Then where did you go to? A. Delta Trust & Banking Co.

Q. What kind of institution is that? A. Large banking institution.

Q. How long did you stay with them? A. Five years at the time I went with this business.

38 Q. Ever have any difficulty in getting what money you wanted? A. No, sir.

Q. When did you draw the last cent out of this business? A. Sept. 7th, 1901, I drew $100.

Q. What business have you been following since September 7th, 1901? A. Buying cotton.

Q. Under what name? A. Luckett & Wells.

Q. What kind of business have you all been doing? A. We have done a satisfactory business; not large and not small.

Q. Had Mr. Luckett purchased cotton for himself prior to that time, on his own account? A. Yes, sir; he had.

Q. You had not? A. No, sir.

Q. What did Mr. W. L. Wells do? A. He bought cotton.

Q. When contracts for purchase were made who would buy that cotton? A. W. L. Wells.

Q. Under whose name? A. W. L. Wells Co.

Q. Did you have any cognizance of these telegrams from time to time? A. Yes, sir.

Q. In the discussions you and Mr. Wells had, did you discuss the policy of the business? A. Yes, sir; we did quite often.

Q. Something was said about the traveling of the firm; what do you mean by the traveling of the firm? A. Cotton buyers usually make their trips in the summer time to see their correspondents in the east and elsewhere, and this was done by Mr. Wells.

Q. When Mr. Wells came back at the end of the summer was anything said about the contracts made? A. Yes, sir.

Q. Who paid the expenses of Mr. Wells? A. The company.

Q. Do you recall any trip or trips that Mr. Butterworth made for the company? A. He went to England; he was raised in England and went over there to make arrangements for the firm in Manchester to buy cotton for those mills.

Q. Did you do any business with them? A. Yes, sir; some.

Q. Did you fill any of these contracts? A. Yes, sir.

Q. That Mr. Butterworth made? A. Yes, sir.

Q. On Dec. 3rd, 1900, when these invoices were receipted upon the receipt of that $15,000.00, were there any other invoices due at that time. A. Other invoices had been made, but they hadn't reached maturity.

Q. Have you stated the amount of the other invoices? A. No, sir.

Q. How much was it? A. I made a memorandum of it.

Q. Give me the dates of those invoices? A. At Gastonia Mills, Nov. 15, $26,378.84; Nov. 21st, $2,190.82; Nov. 24th, $5,276.24;

39 Nov. 26th, $4,862.35; Nov. 26th, $4,954.48. Avon Mills: Nov. 24th, $6,515.36; Nov. 28th, $5,598.14; Nov. 28th, $5,675.35.

Q. What is that $22.50 to come off of that? A. That is the freight from Clover, S. C., to Gastonia on fifty bales of cotton.

Q. How did that come around? A. It was shipped there and was afterwards shipped to Gastonia.

Q. Have these invoices ever been receipted? No, sir.

Q. Had you receipted any invoices before that time? A. Yes, sir, the December before.

Q. Where would you have kept them? A. In the books in the same manner.

Q. Examine that book and see what it is? A. This is a letter book of W. L. Wells, private.

Q. Where was that book kept? A. In the safe.

Q. Did you have any knowledge of the contents of it? A. No, sir, none whatever.

Q. Turn to the page there that you have your finger in, that is a copy of that letter of July 13th, 1900? A. Yes, sir (p. 58).

Q. Something has been said about the books, etc., of this company being kept in the safe of W. L. Wells & Co.; what size safe is that? A. It is quite a large safe.

Q. Where is the office of Luckett & Wells? A. 111 Mulberry St.

Q. Explain to the jury where that is. A. Just to the rear of W. L. Wells & Co. office; the rear ends come together.

Q. How far apart are they? I don't suppose over 30 or 40 feet.

Q. Any connection from the rear? A. No, sir.

Q. How far are they from the regular mode of communication? A. About half a square.

Q. Has Wells & Luckett a safe. A. A rather small one.

Q. What are kept in Wells & Luckett safe? Their books.

Plaintiffs Rest.

40 The following are the Exhibits referred to in the evidence introduced by the plaintiff:

EXHIBIT 1.

THE CHARTER OF INCORPORATION OF

THE

W. L. WELLS COMPANY.

Section 1. Be it known and remembered, that W. L. Wells, John T. Wells and George Butterworth, their associates and assigns, are hereby created a body politic and corporate, under the name and style of W. L. Wells Company, and by that name shall have succession for fifty years, shall have power to sue and be sued, contract and be contracted with, may have a corporate seal, and break and alter the same at pleasure.

Section 2. The capital stock of said corporation shall be fifty thousand dollars, divided into shares of five hundred dollars each, and as soon as ten thousand dollars of said stock is subscribed and paid for, said corporation shall have power to commence business.

Section 3. Said corporation is formed for the purpose of conducting a general cotton business, and may buy and sell cotton, and may transact a cotton factorage business, may advance money or supplies for the purpose of controlling shipments of cotton, may take and receive mortgages or deeds of trust upon property to secure said advances, and generally may have all powers conferred by Chapter 25 of the Annotated Code of 1892 necessary and requisite to carry out the purpose of said corporation.

Section 4. The Board of Directors of said corporation shall consist of three persons, whose numbers may be increased at any time by a majority vote of the stockholders, and said directors shall have power to elect all necessary officers, and prescribe the duties, salaries and tenure of such officers.

The foregoing proposed charter of incorporation is respectfully referred to the Honorable Attorney General for his advice as to the constitutionality and legality of the provisions thereof.

Jackson, Miss., April 26th, 1898.

A. J. McLAURIN, Governor.

The provisions of the foregoing proposed charter of incorporation

41 are not violative of the Constitution or laws of the State.
Jackson, Miss., WILEY N. NASH,
April , 1898. Attorney General.

EXECUTIVE OFFICE,

(State Coat of Arms),

Jackson, Mississippi.

The within and foregoing charter of incorporation of the W. L. Wells Company is hereby approved.

{Great Seal of the State of Mississippi.} In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed this 1st day of June, 1898.

By the Governor: A. J. McLAURIN.

J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, Warren County, } *ss:*

I, J. D. Laughlin, Clerk of the Chancery Court of said county, hereby certify that the foregoing instrument of writing was filed in my office of record on the 19th day of July, 1898, at 11:30 o'clock A. M., and duly recorded in Charter Book No. 1, page 194, *et seq.*

{Seal of Chancery Court, Warren County.} Witness my hand and seal of said — this 19th day of July, 1898.
J. D. LAUGHLIN, Cler.
By J. L. HYLAND, D. C.

OFFICE OF SECRETARY OF STATE,

Jackson, Miss.

I, J. L. Power, Secretary of State, do certify that the charter hereto attached, incorporating the W. L. Wells Company, was, pursuant to

42 the provisions of Chapter 25 of the Annotated Code, 1892, recorded in the Book of Incorporations in this office.

{ Great Seal of the State of Mississippi. } Given under my hand and the Great Seal of the State of Mississippi hereunto affixed this 1st day of June, 1898.

J. L. POWER,
Secretary of State.

EXHIBIT 2.

THE CHARTER OF INCORPORATION OF

THE

W. L. WELLS COMPANY.

Section 1. Be it known and remembered that W. L. Wells, John T. Wells and George Butterworth, their associates and assigns, are hereby created a body politic and corporate, under the name and style of W. L. Wells Company, and by that name shall have succession for fifty years, shall have power to sue and be sued, contract and be contracted with, may have a corporate seal, and break and alter the same at pleasure.

Section 2. The capital stock of said corporation shall be fifty thousand dollars, divided into shares of five hundred dollars each, and as soon as ten thousand dollars of said stock is subscribed and paid for, said corporation shall have power to commence business.

Section 3. Said corporation is formed for the purpose of conducting a general cotton business, and may buy and sell cotton, and may transact a cotton factorage business, may advance money or supplies for the purpose of controlling shipments of cotton, may take and receive mortgages or deeds of trust upon property to secure said advances, and generally may have all powers conferred by Chapter 25 of the Annotated Code of 1892 necessary and requisite to carry out the purpose of said corporation.

Section 4. The Board of Directors of said corporation shall consist of three persons, whose numbers may be increased at any time by a majority vote of the stockholders, and said directors shall have power to elect all necessary officers, and prescribe the duties, salaries and tenure of such officers.

The foregoing proposed charter of incorporation is respectfully

43 referred to the Honorable Attorney General for his advice as to the constitutionality and legality of the provisions thereof.

Jackson, Miss., April 26th, 1898.

A. J. McLAURIN, Governor.

The provisions of the foregoing proposed charter of incorporation are not violative of the Constitution or laws of the State.

Jackson, Miss., April , 1898.

WILEY N. NASH, Attorney General.

EXECUTIVE OFFICE,

(State Coat of Arms),

Jackson, Mississippi.

The within and foregoing charter of incorporation of the W. L. Wells Company is hereby approved.

{Great Seal of the State of Mississippi.}

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed this 1st day of June, 1898.

By the Governor:

A. J. McLAURIN.

J. L. POWER, Secretary of State.

OFFICE OF SECRETARY OF STATE,

Jackson, Mississippi.

I, J. L. Power, Secretary of State, do certify that the charter hereto attached, incorporating the W. L. Wells Company, was pursuant to the provisions of Chapter 25 of the Annotated Code, 1892, recorded in the Book of Incorporations in this office.

{Great Seal of the State of Mississippi.}

Given under my hand — the Great Seal of Mississippi hereunto affixed this 1st day of June, 1898.

J. L. POWER, Secretary of State.

44 STATE OF MISSISSIPPI, }
Warren county. } ss:

I, J. D. Laughlin, Clerk of the Chancery Court of said county, hereby certify that the foregoing instrument of writing was filed in my office for record on the 19th day of July, 1898, at 11:30 o'clock, A. M., and duly recorded in Charter Book No. 1, page 194, *et seq.*

Witness my hand and seal of said court, this, the 19th day July, 1898.

[SEAL.] J. D. LAUGHLIN, Clerk.
By J. L. HYLAND, D. C.

STATE OF MISSISSIPPI, }
Warren county. } ss:

I, J. D. Laughlin, Clerk of the Chancery Court of said county, hereby certify that the foregoing one page and eleven lines contain a true and correct copy of the charter of incorporation of the W. L. Wells Company, recorded in Book of *Chaters* No. 1, pages 194 *et seq*, as the same appears on file and of record in my said office.

Witness my hand and seal of said court, this 2nd day of May, A. D. 1902.

[SEAL.] J. D. *LAGHLIN*, Clerk.

STATE OF MISSISSIPPI, }
Warren county. } Chancery Court.

I, W. C. Martin, Sole Presiding Chancellor of the Fourth Chancery District of the State of Mississippi (said district including the county of Warren), do hereby certify that J. D. Laughlin, whose genuine signature appears to the foregoing certificate of copy of *chater* of W. L. Wells Company, is now, and was at the date of said certificate, the Clerk of the Chancery Court of said county, duly elected and qualified according to law; and that all his official acts as such are entitled to full faith and credit; that his said certificate is in due form of law; that the seal thereto attached is the genuine seal of said Chancery Court, and said court is a court of record.

Given under my hand at Vicksburg, Mississippi, this 2nd day of May, 1902.

W. C. MARTIN, Chancellor.

45 THE STATE OF MISSISSIPPI, Warren county. } Chancery Court.

I, J. D. Laughlin, clerk of said court, do hereby certify that Honorable W. C. Martin, whose genuine signature appears to the annexed and last above certificate of attestation, is now, and was at the date of said certificate, the sole Presiding Chancellor of the Fourth Chancery District (including said county of Warren), as therein stated, duly appointed by lawful authority and legally qualified; and that all his acts as such are entitled to full faith and credit, in judicature and thereout; that his said certificate and attestation are in due form of law. and that said Chancery Court is a court of record.

In testimony whereof, I have hereto set my hand and the seal of said court, at my office, in city of Vicksburg, Miss., this 2nd day of May, 1902.

[SEAL] J. D. LAUGHLIN, Clerk.

EXHIBIT 3.

Vicksburg, Miss., July 18, 1898.

Meeting of the Incorporators of W. L. Wells Co.

A meeting of the incorporators of the W. L. Wells Co. was held at the office of Miller, Smith & Hirsch, in the city of Vicksburg, this day. Present in person or by proxy, W. L. Wells, Jno. T. Wells, and George Butterworth.

Upon motion, Mr. John T. Wells was elected chairman of the incorporators, and on motion, Mr. Murray F. Smith, proxy of W. L. Wells, was elected secretary of the meeting.

The *chater* of incorporation of the Company, approved by the Governor of the State of Mississippi on the 1st day of June, 1898, was read over and adopted.

Books of subscription to the capital stock of said corporation were then opened, and W. L. Wells subscribed for ten shares of the capital stock of said corporation; John T. Wells subscribed for five shares and George Butterworth subscribed for five shares of the capital stock of said corporation. The meeting of the incorporators was thereupon adjourned.

JOHN T. WELLS, Chairman.

MURRAY F. SMITH, Secty.

Meeting of the Stockholders of W. L. Wells Co., July 18, 1898.

Vicksburg, Miss, July 18, 1898.

A meeting of the stockholders of the W. L. Wells Co. was this day held at the office of Miller, Smith & Hirsch, in the city of Vicks-

46 burg; present in person or by proxy, W. L. Wells by Murray F. Smith, proxy; John T. Wells in person, and George Butterworth by John T. Wells, proxy.

Thereupon, on motion of Murray F. Smith, proxy for W. L. Wells, it was moved that John T. Wells be elected chairman of the stockholders' meeting, and that Murray F. Smith, proxy for W. L. Wells, be elected secretary of said meeting, which motion was carried by a vote of all the stock then present.

On motion, it was resolved that W. L. Wells, John T. Wells, and George Butterworth be elected directors of this company, which motion prevailed, and thereupon the chairman declared said gentlemen elected directors of said Company.

On motion, the stockholders' meeting was then adjourned subject to the call of the chairman.

JOHN T. WELLS, Chairman.

MURRAY F. SMITH, Secty.

Meeting of Incorporators of W. L. Wells Co., July 18, 1898.

Vicksburg, Miss., July 18, 1898.

Meeting of the Incorporators of W. L. Wells Co.

A meeting of the incorporators of the W. L. Wells Co. was held at the office of Miller, Smith & Hirsch, in the city of Vicksburg, this day. Present in person or by proxy, W. L. Wells, John T. Wells, and George Butterworth.

Upon motion, Mr. John T. Wells was elected chairman of the incorporators, and, on motion, Mr. Murray F. Smith, proxy of W. L. Wells, was elected secretary of the meeting.

The *chater* of incorporation of the company, approved by the Governor of the State of Mississippi, on the 1st day of June, 1898, was read over and adopted.

Books of subscription to the capital stock of said corporation were then opened, and W. L. Wells subscribed for ten shares of the capital stock of said corporation; John T. Wells subscribed for five shares and George Butterworth subscribed for five shares of the capital stock of said corporation. The meeting of the incorporators was thereupon adjourned.

JOHN T. WELLS, Chairman.

MURRAY F. SMITH, Secty.

Vicksburg, Miss., July 18th, 1898.

A meeting of the stockholders of the W. L. Wells Co. was this day held at the office of Miller, Smith & Hirsch, in the city of Vicksburg; present in person or by proxy, W. L. Wells by Murray F.

47 Smith, proxy; John T. Wells in person, and George Butterworth by John T. Wells, proxy.

Thereupon on motion of Murray F. Smith, proxy for W. L. Wells, it was moved that John T. Wells be elected chairman of the stockholders' meeting, and that Murray F. Smith, proxy for W. L. Wells, be elected secretary of said meeting, which motion was carried by a vote of all the stock then present.

On motion, it was resolved that W. L. Wells, John T. Wells, and George Butterworth be elected directors of this company, which motion prevailed, and thereupon the chairman declared said gentlemen elected directors of said company.

On motion, the stockholders' meeting was then adjourned subject to the call of the chairman.

JOHN T. WELLS, Chairman.

MURRAY F. SMITH, Secty.

Exhibits 4, 5, 6 and 7 are the statements attached to the complaint.

LETTER OF FEB'Y 7, 1900.

Vicksburg, Miss., Feby. 7th, 1900.

Mr. John F. Love, Treasurer,
Gastonia, N. C.,

Dear Sir:—

Enclosed we hand you memo accounts showing ledger balances of your various accounts with interest at 6% on overdue amounts to Feby 1st. Trusting safely to hand, and satisfactory,

Yours very truly,

W. L. WELLS CO.
J. T. W., Secy & Treas.

Statement Page 89, Book 6.

John F. Love, Treas.,

In a/c with

W. L. Wells & Co.

Gastonia Cotton Manf'g. Co.....	$26,209 82	
Avon Mills	53,311 78	
Ozark Mills.....	13,633 04	
Int. 6% on overdue a/cs to Feby 1st.....	1,196 86	
		$94,351 50

E. E.

Vicksburg, Feby 7th, 1900,
W. L. WELLS CO.

48 **LETTER OF FEBRUARY 9, 1900.**

W. L. Wells, President. John T. Wells, Sec'ty and Treas. George Butterworth, Vice-Prest.

Established 1882. Incorporated 1898.

W. L. Wells Company.

Cotton Merchants.

Cable Address "Wells."

Yazoo City, Miss. Greeneville, Miss.

Edwards, Miss. Delhi, La.

Vicksburg, Miss., Feby. 9th, 1900.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Sir:—

Your favor of the 7th inst., to our Mr. W. L. W., received to-day. We beg to acknowledge receipt of check enclosed for $13,683.04, covering 239 bales for Ozark Mills, for which we are exceedingly obliged.

We note your order for the full style one inch, also 1¼, and we will go on the market for this cotton at once, and do the best we can for you. There is a very strong demand for export and prices are sky high, and our purchases probably will look dear to you, but we will do the very best we can.

Mr. W. L. W. is absent to-day and will not return before Monday, at which time he will write you more fully.

Yours very truly,

W. L. WELLS CO.

J. T. W.

TELEGRAM.

March 6th, 1900.

John F. Love,
Gastonia, N. C.

When can we expect a remittance? It is absolutely necessary to remit at once. It must not be delayed. Want an answer.

W. L. WELLS CO.

49 **TELEGRAM.**

Gastonia, N. C., Mch. 6, 00.

W. L. Wells Co.,
Vicksburg.

Will remit to-day. Have been out sick for a week.

JNO. F. LOVE.

LETTER OF MARCH 6, 1900.

Vicksburg, Miss., March 6th, 1900.

John F. Love, Treas.,
Gastonia.

Dear Sir:—

We wired you this morning in reference to a remittance, and are just in receipt of your telegram saying that you would remit to-day, etc.

It is useless for us to rehash this matter, and we fully appreciate and believe you have been disappointed in making money arrangements, but have we not done our full share in carrying the load? We have made every shift we could conceive of, and have really hampered our business very considerably in order to help you out, but there is a limit to everything, and while we don't want to be unreasonable, at the same time you must admit that it is quite time the account should be shaped up, and this we must insist on. You have profited many thousand dollars at our expense and discomfort, and while we are very glad indeed that this is the case, we must say that we are growing very tired of the load, and we think it is time somebody else was shouldering it. We enclose statement to 1st inst.

Yours truly,

W. L. W.

W. L. WELLS CO.

50 John F. Love, Treas.,

In a/c with

W. L. Wells Co.

STATEMENT OF ACCOUNTS TO MARCH 1, 1900.

1900.

Feb. 1st.	To balance a/c rendered.....	$94,351 50
	Int. on same to 2/9-9 days at 6 %.	141 48
	Int. on $80,788.46, 2/9-28-19 days at 6 %..	255 64
		$94,748 62
Fby. 9th	By cash.....	$13,633 04
	Balance due March 1st, 1900.....	$81,115 88

E. & O. E.

Vicksburg, Mch. 5th, 1900.

LETTER OF APRIL 2, 1900.

Vicksburg, Miss., April 2nd, 1900.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:—

Enclosed please find statement of account to April 1st, showing balance due us of $53,546.41.

Please report on same, and remit as liberally as you possibly can at your early convenience, and oblige,

Yours very truly,

W. L. WELLS CO.

J. T. W. Enc.

51 **STATEMENT OF ACCOUNTS TO APRIL 1, 1900.**

John F. Love, Treas.,

In *a/c* with

W. L. Wells Co.

1900.			
Mch. 1.	To balance as per acct. rendered...	$81,115 58	
	Int. on same to Mch. 8th 8 days at 6 per ct.....	108 16	
	Int. on $60,539.76 to M'ch 12—4 days at 6 per ct.....	40 36	
	Int. on $53,231.32 to M'ch 31—19 days at 6 per ct.....	168 57	
	Credits—		
Mch. 8th.	By cash remittance.....		$20,575 82
12th.	By cash remittance.....		7,308 44
	Balance due April 1st.....		53,548 41
		$81,432 67	$81,432 67
April 1st to balance.....		$53,548 41	

E. E.

Vicksburg, April 1st, 1900.

LETTER OF MAY 7, 1900.

Vicksburg, May 7, 1900.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:—

Enclosed we beg to hand you statement of your account to May 1st, showing balance due of $44,067.91. Please investigate and report on same at your early convenience, and oblige,

Yours very truly,

J. T. W. W. L. WELLS CO.

52 **STATEMENT OF ACCOUNTS TO MAY 1, 1900.**

John F. Love, Treas.,

In a/c with

1900.			W. L. Wells Co.
April 1st.	To balance as per a/c rendered..	$53,548 41	
	Int. on same to Apr. 9th, 9 days, at 6%.....	80 32	
	Int. on $43,834.19—Apl. 9–30, 21 days, 6%.....	153 40	

Credit.

April 9th.	By cash remittance.....		$ 9,714 22
	Balance due May 1st.....		44,067 91
		$53,782 13	$53,782 13
May 1st, 1900.	To balance.....	$44,067 91	

—EE—

Vicksburg, May 1st, 1900.

53 **STATEMENT OF ACCOUNT TO JULY 1, 1900.**

John F. Love, Treas.,
In a/c with
W. L. Wells Co.

1900.			
June 1st.	To balance as per a/c rendered...	$44,295 64	
	Int. on same June 1–5, 5 days, at 6 %.....	36 95	
	Int. on $28,295.64, June 5–22, 17 days, at 6 %	80 29	
	Int. on $18,295.64, June 22–30, 8 days, 6 %	25 25	
22nd	Invoice 64 B/C Dod, Gastonia C. Mfg. Co	3,283 18	
	Credits.		
June 5th.	By cash remittance.....		$16,000 00
22nd	" " "		10,000 00
	Balance		21,720 51
		$47,720 51	$47,720 51
July 1st.	To balance.....	$21,720 51	

—EE—

Vicksburg, June 30th, 1900.

W. L. WELLS CO.

John F. Love, Treas.,
In a/c with
1900. W. L. Wells Co.

STATEMENT OF ACCOUNT TO AUGUST 1, 1900.

July 1st.	To balance as per a/c rendered.....	$21,720 51
	Int. on same, 31 days, at 6 %..	112 22
	Amount due August 1st, 1900.....	$21,832 73

—EE—

Vicksburg, August 1st, 1900.

W. L. WELLS CO.

54 **STATEMENT OF ACCOUNT TO SEPTEMBER 1, 1900.**

John F. Love, Treas.,
In a/c with
W. L. Wells Co.

1900.		
Aug. 1st.	To balance as per acct. rendered.....	$21,832 73
	Less cash remittance August 3d.....	9,206 30
		$12,626 43
	Int. on balance 31 days at 6 per ct.....	65 24
	Amount due Sept. 1st, 1900.....	$12,691 67

E. E.
Vicksburg, Miss., Sept. 1st, 1900.
W. L. WELLS CO.

STATEMENT OF ACCOUNT TO OCTOBER 1, 1901.

Avon Mills, Gastonia, N. C.,
In a/c with
W. L. Wells Co.

1901.		
Aug. 15th.	To balance as per acct. rendered.....	$28,680 77
Sept. 30th.	To int. on same to Oct. 1st, 1901, 47 days at 6 per ct.....	224 66
	Amount due Oct. 1st, 1901.....	$28,905 43

E. E.
Vicksburg, Sept. 30th, 1901.
W. L. WELLS CO.

STATEMENT OF ACCOUNT TO OCT. 1, 1901.

Gastonia Cotton Manufacturing Co.,
In a/c with
W. L. Wells Co.

1901.		
Aug. 15th.	To balance as per acct. rendered.....	$37,585 29
Sept. 30th.	To int. on same to Oct. 1, 1901, 47 days at 6 per ct.....	294 40
	Amount due Oct. 1st, 1901.....	$37,879 69

E. E.
Vicksburg, Sept. 30th, 1901.
W. L. WELLS CO.

55 **STATEMENT OF ACCOUNT TO JUNE 1, 1900.**

Copy of Statement Page 121, Book No. 6.

John F. Love, Treas.,

In a/c with

W. L. Wells Co.

1900.		
May 1st.	To balance as per acct. rendered	$44,067 91
	Int. on same to May 31st, 31 days at 6 per ct...	227 73
	Balance due June 1st, 1900	$44,295 64

E. E.
Vicksburg, June 1st, 1900.

W. L. WELLS CO.
W.

STATEMENT OF ACCOUNT TO MARCH 1, 1900.

Copy of Statement Page 105, Book No. 6.

John F. Love, Treas.,

In a/c with

W. L. Wells Co.

1900.		
Feb. 1st.	To balance account rendered	$94,351 50
	Int. on same to 2-9—9 days at 6 per ct.	141 48
	Int. on $80,788.46, 2-9-28—19 days at 6 per ct.	255 64
		$94,748 62
Feb. 9th.	By cash	13,633 04
	Balanace due March 1st, 1900	$81,115 88

E. & O. E.
Vicksburg, March 5, 1900.

W.

56 **STATEMENT OF ACCOUNT TO JULY 1, 1900.**

Copy of Statement Page 123, Book No. 6.

John F. Love, Treas.,

In a/c with

W. L. Wells Co.

1900.				
June	1st.	To balance as per acct. rendered	$44,295 64	
		Int. on same June 1-5 5 days at 6 per ct	36 95	
		Int. on $28,295.64, June 5-22, 17 days 6 per ct	80 29	
		Int. on $18,295 64 June 22-30, 8 days 6 per ct	24 45	
	22nd.	Invoice 64 B-C DOD, Gastonia C. Mfg. Co	3,283 18	
		Credits—		
June	5th.	By cash remittance		$16,000 00
June	22nd.	By cash remittance		10,000 00
		Balance		21,720 51
			$47,720 51	$47,720 51
July	1st.	To balance	$21,720 51	

E. E.
Vicksburg, June 30th, 1900.

W. L. WELLS CO.
W.

57 **STATEMENT OF ACCOUNTS TO MAY 1, 1900.**

Copy of Statement Page 120, Book No. 6.

John F. Love, Treas.,

In a/c with

W. L. Wells Co.

1900.			
Apl. 1st.	To balance as per acct. rendered,	$53,548 41	
	Int. on same to Apl. 9, 9 days at 6 per ct.....	80 32	
	Int. on $43,834.19, Apl. 9-30, 21 days 6 per ct..	153 40	
	Credit—		
Apl. 9th.	By cash remittance.....		$ 9,714 22
	Balance due May 1st.....		44,067 91
		$53,782 13	$53,782 13
May 1st.	To balance.....	$44,067 91	

E. E.

Vicksburg, May 1st, 1900.

W.

LETTER OF AUGUST 12, 1901.

Vicksburg, Miss., August 12, 1901.

Mr. John F. Love, Gastonia, N. C.:

Dear, Sir,—Herein we beg to hand you statements of accounts of the Gastonia Cotton Manufacturing Company and the Avon Mills, with interest at 6% calculated to August 15, 1901. The interest on all charges has been calculated at thirty days from the date shipments were made, and on all credits from the day the money was received by us.

Please check over these statements in order that they may be verified by you when our Mr. W. L. W. arrives there the latter part of this week. As you are aware, our firm will be dissolved on September 1st, and it will be necessary to have this matter closed prior to that date.

Very truly yours,

W. L. WELLS CO.

J. T. W.
8—237

58 MEMORANDUM.

Statements were sent August 12, 1901, showing balance due as of August 15:

By the Gastonia Cotton Manufacturing Company..... $37,585 29
By the Avon Mills 28,680 77

Exhibits 8 and 9 were full statements of the accounts of the Wells Company against the two defendants, the Avon Mills and the Gastonia Cotton Manufacturing Company, charging against them cotton sent out in the exhibits attached to the complaint and giving credit for payments made and charging interest and showing the balances due, as contended for by the plaintiff.

It is agreed that it is not necessary to insert these exhibits, as the substance of them is shown by the other exhibits.

EXHIBIT "A."

Vicksburg, Miss., July 13, 1900.

Mr. John F. Love, Gastonia:

Dear Mr. Love,—I have yours of the 26th ulto. and have been waiting hoping for a favorable reply, but this eastern complication has knocked our friend clean out of the box. As to myself, as stated to you when there, I am tied up in a long deal, which seems without termination, and, until it is settled, I can't do anything; and in justice to you, I will say I don't see any prospects of a settlement except through the courts, and you know what this means. So to sum the matter up, you can only depend on me for the original $10,000.00, with a bare possibility of later on increasing it to $25,000.00, but don't depend on the latter. Hope you are progressing all right. Sorry I can't come up as you suggest, but have made my arrangements to go to Canada some time soon, and will see you on my return about the middle of September. Crop prospects improving, but I don't think the crop can exceed last years; but with the Eastern complications this will be enough. If you can possibly do so, please remit us balance on account, as we need it to settle up matters, which I should like to do before leaving next Wednesday.

Yours truly,

W. L. WELLS.

59

EXHIBIT B.

Invoice of 64 bales cotton shipped by W. L. Wells Company on board A. & W. R. R. for Gastonia, N. C., for account and risk of ourselves, as per order received through Gastonia Cotton Manufacturing Company:

Dod. 6413/C: St. & G. M. 1-1/16 Staple.

3203 lks. @ 10¼c	3283 18
a/c	5923 12
	9206 30

Freight Prepaid.
To be delivered when paid for.

Paid

—E. E.—

W. L. WELLS CO.,
Aug. 3, 1900.

Vicksburg, June 22nd, 1900.

W. L. WELLS CO.

(The above three lines *was* written across the face of invoice.)

Exhibit "B."

EXHIBIT C.

$9,206.30. GASTONIA BANKING CO.,

Gastonia, N. C., Aug. 1, 1900.

Pay to the order of W. L. Wells Co.,
Nine Thousand, Two Hundred, Six & 30/100 Dollars.
To Hanover National Bank,
No. 4423 New York, N. Y.

JOHN F. LOVE,
Cashier.

Ex. "C."

EXHIBIT D.

Vicksburg, Miss., August 31, 1900.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Sir:—

Enclosed we beg to hand you a statement of your account to September 1st, showing balance due us of $12,691.67. May we ask that you remit us by return mail in full for this balance, and oblige,

Yours very truly,

W. L. WELLS CO.

60 Endorsement by John F. Love:—

$10,000.00 Stock Loray Mills.
2,691.67 Interest.

$12,691.67 Balance.

We want to see your Mr. W. L. Wells about it when he comes to see us.

Yours— JOHN F. LOVE, Treas.

Ex. " D."

EXHIBIT E.

No. 8.

Invoice of 50 bales cotton, shipped by W. L. Wells Company, on board Ala. & Vicksburg R. R. for Gastonia, N. C., for account and risk of Gastonia Cotton Manufacturing Company, as per order, received through do. October 1, 1900.

LIN / E
Wells.

50 B / C St. M. & Above 1 to 1 1 / 16 Staple,
25583 lbs. at 11c. $2814.13

Freight Prepaid.

—E. E.—

Vicksburg, Oct. 2, 1900.

No. 1 W. L. WELLS CO.

LIN / E

Paid

W. L. WELLS CO.

Oct. 11, 1900.

The annexed invoice (Defendant's Exhibit E.) is one of a series of invoices sent by plaintiffs to defendant, as set forth in the testimony—all of said invoices being alike in form and differing only in dates and amounts. It is not necessary, therefore, to annex more than one of said invoices.

Invoice of 100 bales cotton, shipped by W. L. Wells Company, on board Ala. & Vicksburg R. R. for Gastonia, N. C., for account and risk of Gastonia Cotton Manufacturing Company, as per order, received through do. October 1, 1900.

61

EXHIBIT J.

J E S O

O. 100 B/c St. & G. M. 1 to 1-1/16 Staple,
51355 lbs. @ 10¼c 5263.89

Freight Prepaid. Total, 40357.59
Less Check, 25000.00

Enclosed. 15357.59

Paid

W. L. WELLS CO.,

—E. E.— Dec. 3, 1900.

(The above three lines were written across the face of invoice.)

Vicksburg, Oct. 25, 1900,

W. L. WELLS CO.

"Exhibit J."

"EXHIBIT Q."

Gastonia, N. C., Dec. 1, 1900.

Pay to the order of W. L. Wells Co.,

$15,357.59 GASTONIA BANKING CO.,

Fifteen thousand, three hundred, fifty-seven and 59/100 Dollars.

To Hanover National Bank, JOHN F. LOVE,
No. 4921 New York, N. Y. Cashier.

"EXHIBIT R."

$25,000.00 GASTONIA BANKING CO.,

Gastonia, N. C., Nov. 19, 1900.

Pay to the order of W. L. Well Co.,
Twenty-five Thousand Dollars.

To Hanover National Bank, JOHN F. LOVE,
No. 4865 New York, N. Y. Cashier.

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"EXHIBIT S."

Vicksburg, Miss., October 4, 1900.

Mr. John F. Love,
Gastonia,

Dear Mr. Love:—

In reference to the Loray matter, I have arranged to take the $50,000.00 stock, but want you, as stated when there, to let this come in on the last payment, say about 1st January next. This will enable me to clean up my deal I wrote you about last spring, and besides for the next 90 S/s, I will be crowded somewhat for money to carry on my business. I am going to make a change in my present firm after this season, so don't want my arrangements with you and the Loray known to them, hence in writing me about this please mark your letters "*Personal.*"

Please keep me posted about how the Loray is progressing. With regards to Mr. Gray, I am,

Yours truly,

W. L. WELLS.

P. S.: When is your idea to organize?

EXHIBIT "T."

Gastonia, N. C., February 2, 1901.

W. L. Wells, Esq.,
Vicksburg, Miss.,

My Dear Mr. Wells:—

It has been some time since we heard from you, but we trust the New Year is treating you well and you were not caught in "the squeeze." Our work is moving on fine; we are now finishing up all our buildings, will finish in another week or two, and we are now putting in our machinery, have already received about 75 cars machinery and more on the road. We have a very handsome mill indeed, and very substantial and massive. We will go right ahead with the machinery, but on account of the Chinese troubles, market, etc., we will not start running until in the spring or summer. Cotton is too high and goods too cheap and our commission house are looking for a change *soon*.

We hope to put the roof on our cotton house and finish it up this month, eight houses 50x150, two stories high, to hold 15 to 20,000 bales cotton.

I have paid in your $50,000.00 stock and can send you certificates

63 any time in any way you suggest, and before issuing them will await your advice. Please have our account with your house credited with the amount. We are putting the roof on my house now and we hope soon to have it closed in and be putting up the inside finish. It will be a very comfortable place. We are all well but myself; I have had a bad cold and hoarseness.

I remain, awaiting your favors,

Yours,

JOHN F. LOVE.

The following are the exhibits referred to in the evidence introduced by the defendant and in the cross-examination of its witness. Some of the exhibits referred to in the cross-examination of the defendants' witness will be found among the plaintiff's exhibits and are, therefore, not repeated here.

EXHIBIT —.

State of North Carolina,
County of Gaston.

Articles of agreement in reference to the formation of a corporation pursuant to the laws of North Carolina, as contained in sections 677 to 680 of the Code and the various acts amendatory thereof.

First. We, John F. Love, George A. Gray, Frost Torrence, J. M. Sloan, W. T. Rankin and our associates, agree to enter into, form and organize a corporation under the laws of North Carolina.

Second. The name of the corporation shall be "The Loray Mills."

Third. The principal place of business shall be at or near Gastonia, Gaston county, N. C.

Fourth. The duration of the corporation shall be thirty (30) years.

Fifth. The amount of the capital stock of the corporation shall be one million ($1,000,000) dollars, divided into ten thousand (10,000) shares of the par value of one hundred ($100) dollars each.

Sixth. The business of the corporation shall be to manufacture any and all kinds of warps, yarn, cloth, prints and other fabrics made of cotton, wool or other materials, to purchase, exchange and

64 sell any and all kinds of goods, wares and merchandise, with the power to take, purchase, hold, exchange, lease, sell and convey such real estate as may be necessary to the prosecution of such business, to construct, erect and maintain all such houses, buildings and structures as may be needful, to manufacture, repair and sell all such machinery and supplies as may be useful, and to do any and all things necessary to the proper conduct of the aforesaid business.

In testimony whereof we have hereunto set our hands and seals. Witness:

JOHN F. LOVE, [SEAL.]
GEORGE A. GRAY, [SEAL.]
FROST TORRENCE, [SEAL.]
J. M. SLOAN, [SEAL.]
W. T. RANKIN, [SEAL.]

State of North Carolina,
County of Gaston.

The execution of the foregoing articles of agreement was this day duly acknowledged before me, C. C. Cornwell, Clerk of the Superior Court, in and for Gaston county, North Carolina, by John F. Love, George A. Gray, Frost Torrence, W. T. Rankin and J. M. Sloan, the parties thereto.

Witness my hand, this the 16th day of February, 1900.

C. C. CORNWELL,
Clerk of the Superior Court, Gaston county, North Carolina.

MOTION TO DISMISS OR JUDGMENT AS ON NON-SUIT; MOTION OVERRULED.

At the close of plaintiff's testimony, the defendant moved to dismiss the complaint, or for judgment, as in case on non-suit under the statute of the State of North Carolina, in such cases made and provided, it being Chapter 109 of the Public Laws of 1897 as amended by Chapter 131 of the Public Laws of 1899.

The court overruled the motion.

FIRST EXCEPTION.

The defendant thereupon moved to dismiss the action, because the court, as appears from the testimony, has no jurisdiction thereof, there being no evidence introduced to show that the plaintiff, W. L. Wells Company, was, at the time this action was brought, or is now,

65 a corporation duly created and organized or invested with the right to bring this action under the laws of the State of Mississippi and that the plaintiff has no legal capacity or right to sue in this court, and upon the further ground that the plaintiff's testimony shows that the plaintiff has no legal capacity to sue in this court and that this court has no jurisdiction of the action.

Motion of the defendant was overruled and the defendant then and there, while the jury was still at bar, duly excepted.

JAMES E. BOYD, [SEAL.]
U. S. Judge.

The defendant, the Gastonia Cotton Manufacturing Company, to maintain the issues on its part, introduced oral evidence and exhibits as follows:

EVIDENCE FOR DEFENDANTS.

JOHN F. LOVE INTRODUCED BY DEFENDANTS.

Q. What business are you engaged? A. Cotton manufacturing.

Q. What is your connection with the Avon Mills? A. Secretary and treasurer.

Q. Of the Gastonia Mills? A. Secretary and treasurer.

Q. How long have you kept this office? A. Of the Gastonia Mill since 1888; of the Avon since 1896.

Q. How much stock in the Avon Mill do you own? A. Fraction over a fourth in the Gastonia Mill and a fraction over a half in the Avon Mill.

Q. How much does Geo. Gray own in the Avon Mill? A. One fourth and one fourth in the Gastonia Mill.

Q. Where is the financial business of the office done? A. In the office of the Gastonia banking company of Gastonia.

Q. Who is the president of the banking company? A. John F. Love.

Q. What has Mr. Gray to do with the Gastonia and Avon Mills? A. He is president.

Q. How long have you known Mr. W. L. Wells? A. Since 1896 in a business way. I met him in '97.

Q. Did you do any business with him in '97 and '98? A. Yes, sir, in the name of the Gastonia and Avon Mills, and he did business with me in the name of W. L. Wells & Co. In '98, '99 and 1900 and 1901 he did business with me under the name of W. L. Wells Co.

Q. When was the Loray Mill organized? A. It was chartered Feb. 19th, 1900.

Q. Have you that charter? A. Yes, sir.

66 Q. Produce it.

(Copy of charter filed Exhibit —) (p. 113).

Q. Who were the incorporators? A. Geo. Grey, J. M. Sloan, W. T. Rankin, Frost Torrence and John F. Love.

Q. Did W. L. Wells come to North Carolina in the fall of '98? A. Yes, sir.

Q. Did you meet him at Gastonia? A. Yes, sir.

Q. Go on and state what, if anything, occurred between you and Mr. W. L. Wells as to the business of the season of '98 and '99. A. Mr. Wells makes us a visit every summer and during his visit there we talked over our cotton matters and during the talk of the cotton matters we talked of the organization of the Loray Mill; he had been buying cotton for the Avon and Gastonia Mills for some time and we wished him to continue buyibg it.

Q. Was the business settled up for the year '98 and '99? A. Yes, sir, everything that the Gastonia and Avon Mills owed.

Q. Did you come back in the fall of '99 and make arrangements for the season of '99 and 1900? A. Yes, sir.

Q. At that time what was the condition of the Lorey Mills? A. We were going ahead with the buildings; he saw the buildings.

Q. Did he examine the location of the plant? A. Yes, sir.

Q. Did you advise with him about the location of the plant? A. Yes, sir, we did.

Q. Who do you mean by we? A. Mr. Wells and I.

Q. What occurred between you and Mr. Wells, if anything, in regard to his taking stock in the enterprise?

(Objection by plaintiffs; overruled; testimony admitted; exceptions.)

A. During his visit to us we talked of taking stock in the Laray Mill and he agreed that he *y*ould take $10,*0*0.00 with us any way. He was considering moving to Charlotte and he said if he did he would take $50,000.00 with us and that he had a friend who would take an equal amount. That was in the fall of '99.

Q. What inducement, if any, did you hold out with him to take share in this enterprise? A. We told him if he would come in with us and help us to get this up, we told him we wanted him to be the purchasing agent for the mills for the cotton and buy all our cotton for the three mills, and if he did so we would like to make him one of our directors and vice-president of the mill.

67 Q. At that time the Loray was not incorporated? A. No, sir.

Q. You had bought a site and the buildings were being erected? A. Yes, sir.

Q. Did you buy cotton from Mr. Wells in the fall of '99? A. Yes, sir, and in the spring of 1900.

Q. When did you next see Mr. Wells? A. Mr. Wells visited us the 10th of May, 1900.

Q. What was the condition of the Loray enterprise then; had it been *charted?* A. Yes, sir.

Q. What was the condition of the buildings? A. They were being erected.

Q. How far were these buildings from the town of Gastonia? A. One mile.

Q. Did you take Mr. Wells to see the place? A. Yes, sir.

Q. Did you consult with him about the place? A. Yes, sir.

Q. What did he say then, if anything, about taking stock in this enterprise? A. He was still undecided that he would take stock, but hadn't decided as to the amount. He wrote us before coming up on the 10th of May that he would come to see us and would decide what he would take. He said he was going to try to bring his friend with him, but he couldn't come. He came and talked about it and he said he would go back and talk to his friend about the whole thing, and let us know.

Q. Did you receive any reply? A. Yes, sir, July 13th.

Q. What did you in consequence of that letter? A. In that letter he asked me to remit the balance due him and according to agreement from that letter——

Q. What was the agreement as for payin*f* for this cotton? A. The agreement was that this cotton should be shipped to us in the fall and spring and we should remit for it for so many bales per month and whatever amount of stock he was to take was to be taken out of this cotton.

Q. Was the cotton purchased under that agreement? A. Yes, sir.

Q. You received the letter of July the 13th? A. Yes, sir.

Q. What did you do then? A. A few days after I took the account and deducted the $10,000.00 and remitted him the balance.

Q. What reply, if any, did you get to that remittance? A. I got the bills receipted.

Q. They have been introduced in evidence? A. Yes, sir.

Q. How much did you find due after deducting the $10,000.00? A. Invoices for 64 bales of cotton—$3,283.13.

Q. To whom did you send that check? A. W. L. Wells Co.

68 Q. What reply did you get? A. I got a receipted voucher.
Q. What words were written across the document? A. Paid. Aug. 3rd, 1900.
Q. What did you do, if anything, with the $10,000.00? A. I placed it to Mr. Wells' credit at the Laray Mills.
Q. That was actual cash paid to the Lorey Mills? A. Yes, sir.
Q. And was afterwards expended by the Lorey Co. for what? A. Yes, sir, for work that was done.
Q. Have you the books showing the payment? A. Yes, sir.
Q. Through what bank was it paid? A. Gastonia Banking Co.
Q. You have the books showing the payment? A. Yes, sir.
Q. Did you receive a statement from the Wells Co. dated Aug. 1st? A. Yes, sir.
Q. Your letter to them enclosing check for $9,206.30 was mailed the date of the check? A. Yes, sir.
Q. According to the custom of the usual course of mail would it or not meet this statement mailed from Vicksburg the 1st of Aug.? A. Yes, sir, it would.
Q. Did you receive a statement from Wells Co., dated Sept. 1st? A. Yes, sir.
Q. Has your reply been put in evidence? A. Yes, sir (p. 59).
Q. Did you get any reply to that reply? A. No, sir.
Q. Have you ever received any reply to that reply? A. No, sir.
Q. Have you, until the beginning of this controversy, been called upon to pay for the Avon and Gastonia Mills the $10,000.00 which you then paid for the Lorey Mill? A. No, sir.
Q. Has any officer or agent for the Wells Co. called upon you for that money before this controversy? A. No, sir.
Q. When did you next see Mr. W. L. Wells? A. I saw him in Sept. 1900 in Gastonia.
Q. From what place was he coming? A. My understanding was that he had been to Canada.
Q. Go on in your way and state what conversation occurred between you and Mr. Wells in regard to buying cotton for the season of 1900 and 1901 and what conversation you had if any, in regard to his taking interest in the Lorey Mills.

(Objection by plaintiffs; objection overruled; testimony admitted; exceptions.)

A. Mr. Wells made us a visit and was with us a couple of days and during his visit we spoke of cotton as usual and also spoke of the Lorey Mill; we told him that we would like for him to continue

69 buying our cotton as before and if he carried out the agreement about the Lorey stock we wanted him to continue buying our cotton, but that we had an offer from another party who would become interested with us, but that we would give him the preference before making the other trade.

Q. What did he reply to that? A. He said after talking with him, that he would take the stock, the balance we first talked, about the $50,000.00, and that he would go home and let me know in a few days. In the meantime we had to have some cotton and he went on home and commenced shipping us cotton.

Q. What was the condition of the Lorey Mill at that time? A. The buildings were going on up and I think we had 200 tenement houses erected.

Q. Did he see that property? A. Yes, sir.

Q. Talk to you about it? A. Yes, sir.

Q. Did you or did you not advise with him about the business? A. We did.

Q. When next did you hear from him? A. Dated 4th of Oct. and I got it about the 6th. That letter has been introduced in evidence.

Q. Did you or did you not pay for all the cotton that was shipped to your mills in the fall of 1900 that was due under the contract before Dec. 3rd? A. I did.

Q. How did you pay for it? A. I paid for it in New York check.

Q. How many checks? A. I think there were two or three.

Q. Did you send him a check for $25,000.00? A. Yes, sir.

Q. Why did you send that check? A. He had been shipping us some cotton and wanted us to make a payment on it.

Q. Did you direct how that should be applied? A. No, sir.

Q. After the 1st of Dec. did you calculate how much was due for the fall purchase? A. Yes, sir.

Q. How much was due? A. A little over $40,000.00 less the $25,000.00 that we had paid him.

Q. What did you do then? A. I remitted him a check for the balance, $15,357.59.

Q. With that check you enclosed what paper? A. The original invoices including the check.

Q. Did that include the invoice upon which that statement made that has already been introduced in evidence? A. Yes, sir.

Q. As I understand you, that enclosure was the $15,357.59 check, and this particular invoice with the statement in it showed how the $15,357.59 check was calculated to be used? A. Yes, sir.

70 Q. What reply did you get to that? A. I received the invoices receipted.

Q. How long have you kept books? A. Over 20 years.

Q. What application was made with that $25,000.00? A. In payment of the bills enclosed.

Q. The bills were dated what date? A. The bills were dated in Oct. and Nov. 1900.

Q. Was any part of it applied on the bills of the season of '99 and 1900? A. No, sir.

Q. Did they send you any notice that the balance was due? A. No, sir.

Q. How much was due from your two companies to the Wells Co. in Dec. 1900 after this $15,357.59 payment was made? A. $40,681.08.

Q. Have you the invoices constituting that gross sum? A. Yes, sir.

Q. What did you do with that $40,000.00? A. I placed it to Mr. Wells' credit for Lorey Stock.

Q. Was that sum paid to the Lorey Mills' treasurer by you? A. Yes, sir, in cash.

Q. What became of it? A. It was expended in the work of the mill.

Q. Have you the books showing that payment? A. Yes, sir.

Q. When were they made? A. $10,000.00 Aug. 2nd, 1900. Dec. 3rd, 1900, $40,000.00.

Q. When, if at all, did the Wells Co. make demand on you for that $40,000.00? A. They made demand in Aug. 1901. Not until then.

Q. When they made that demand, they also demanded what else? A. They demanded the $10,000.00 with interest.

Q. Did you write Mr. Wells in Feb. 1901, that letter that has been introduced in evidence? A. Yes, sir.

Q. Did you receive any reply to that letter? A. No, sir.

Q. What does Mr. Wells refer to in his letter of Oct. 4th when he says he wanted you as stated when there to let this come in on the last payment or about the first of Jan. next? A. I take it as referring to the cotton payment.

Q. Anything said in his visit here about the cotton payments? A. Yes, sir, he wanted to know how we wanted to pay for the cotton.

Q. What was agreed? A. I told him we would pay for it along as usual, make our regular monthly payment, and whatever stock he took was to be taken out of this.

Q. What arrangement was this he didn't want any other of his firm to know? A. I suppose he was going to change his firm and was going to take up our business alone and buy the cotton for our mills; he told me that.

71 Q. What did he tell you about it when he was here? A. Told me that he was going to make a change in his firm and that he would take up our business entirely and buy the cotton for all of our mills; that he was getting tired of the other general business.

Q. How many bales of cotton per annum would the Lorey Mill consume if worked in full capacity? A. In the neighborhood of 30,000.

Q. How much would the Avon? A. 2,000 and the Gastonia, 3,000.

Q. What kind of cotton does the Avon and Gastonia use? A. Staple cotton exclusively.

Q. Where is that raised? A. On the Mississippi river.

Q. What would be reasonable compensation for the purchasing agent of these three mills per annum? A. I have been told by reliable cotton men that it was worth $25,000.00 a year.

Q. Have you formed an opinion as to what it was worth? A. Yes, sir, I have, it was worth $25,000.00 a year.

Q. When did the W. L. Wells Co. for the first time claim that the Avon and Gastonia Mill owed this large sum of money? A. Aug. 1901.

Q. At that time what was the condition of the Lorey Mill? A. It was being reorganized.

Q. From Feb. 2nd, 1901, the date of your letter to Mr. Wells, which has been introduced in evidence, to Aug., 1901, did the Wells Co. ever make demand on you from the Gastonia Mill or the Avon Mill this sum of money? A. No, sir.

Q. Whom did you know as the representitive of the Wells Co.? A. W. L. Wells only.

Q. Did you have any transaction with any one *esle* of the W. L. Wells Co? A. No, sir, I did not have any personal intercour*es* with anyone else but W. L. Wells.

CROSS EXAMINATION.

Q. You own one-fourth of the Avon, one-half of the Gastonia, and how much of the Gastonia Banking Co.? A. All of it.

—. You are the cashier and whole thing in the Gastonia Banking Co.? A. Yes, sir.

Q. You commenced doing business with W. L. Wells in 1896? A. Yes, sir, I think so.

Q. Don't you know it? A. Yes, sir.

Q. You solicited that business didn't you? Your Uncle Alonza Abernathy went out to Vicksburg? A. Yes, sir, and bought 800 bales of cotton for us.

Q. Opened up business through W. L. Wells & Co.? A. Yes, sir.

72 Q. You continued to do business with W. L. Wells & Co. until the season of 1898 and 1899 when you did business with the W. L. Wells Co.? A. Yes, sir.

Q. At the very beginning of the business of the W. L. Wells Co., wasn't there a change started right at once? A. In what respect?

Q. Didn't Mr. Wells notify you that he had formed this corporation that other people were interested with him in the business; and that he or this concern could not carry you in the future as he had done in the past? A. No, sir.

Q. Didn't the W. L. Wells Co. send to you written articles of agreement early in the fall of 1898 by which the Avon and Gastonia Mills were not to take the cotton until they paid for it? Had to pay for it as they took it out of the warehouse? A. These papers were sent us, but nothing signed.

Q. Weren't you notified of the change? A. They were sent to us on account of the change in cotton transaction suggested by Mr. Wells. When we first began dealing with Mr. Wells we bought 800 bales of cotton to be shipped 200 B-C weekly, so many bales, a*l*d were shipped on bill of lading and sight draft which was met promptly. The next season, if I remember it was transacted in the same way. The next season, the one you speak about, he was in our town and said that the rates of insurance and storage were so high in Vicksburg that he would prefer shipping the cotton to us so that we could store it and insure it as we could do it much cheaper and allow us to pay for the cotton so many bales per month and at his suggestion we allowed him to ship the cotton. Our first agreement was to give him warehouse receipts for it and after investigating that, he decided that they were no good in Miss. and that he could not use them, but afterwards sent us these contracts to sign and asked us to sign them and have them recorded, which we declined to do and he waived the question and the bills through the season, as can be shown, were marked on the bottom of the bill to be delivered when cotton is paid for; we received the cotton in the fall of the year, put it in the warehouse and remitted him monthly.

Q. Then you were notified that he had changed his business to W. L. Wells Co.? A. I knew it from the letter head, I was not notified of it.

Q. Didn't you know it from correspondence? A. No, sir, except the signatures of the letters.

Q. You didn't know it specifically? A. Not that I remember.

Q. Didn't you on Sept. 22nd, 1898, address Messrs. W. L. Wells Company, Vicksburg, Miss., Gentlemen, etc.? You wrote to the W. L. Wells Co. on Sept. 22nd? A. Yes, sir.

73 Q. Then you knew of the existence of the W. L. Wells Co.? A. Yes, sir.

Q. You solicited business with them right at the beginning of Sept. season 1898, according to this letter; you were anxiously waiting advices? A. They solicited our business first.

Q. How. A. By correspondence.

Q. Show the letter where we ever solicited your business? A. I don't know whether we have letters, but Mr. Wells' visits to us and other things.

Q. Didn't you say they solicited your business by letter and through Mr. Wells? A. That was my understanding.

Q. Have you got any letter that shows that? A. No, sir, I have not.

Q. Didn't you get a letter on Sept. 23rd from the W. L. Wells Co.? (Counsel read letter; didn't you get that letter?) A. Yes, sir.

Q. You can't show any letter in which they solicited your business in Sept. 1898? A. No, sir.

Q. Can you show any telegram? A. No, sir.

Q. Your business had been very satisfactory with Wells Co.? A. Yes, sir.

Q. They bought you exactly the kind of cotton you wanted? A. Yes, sir.

Q. Had no complaint to make? A. None.

Q. That continued through the whole dealings? A. Yes, sir.

Q. You wound up the season of '98 and '99 not owing anything? A. According to our books, yes, sir.

Q. Did I understand you to say in your examination in chief that in 1898 Mr. Wells talked to you about Lorey? A. Yes, sir.

Q. Where abouts? A. Gastonia.

Q. Did you own Lorey at that time? A. We were beginning to work on it.

Q. Who owned the ground? A. Mr. Bradley.

Q. When did you buy it? A. Fall of 1898.

Q. In whose name was the title taken? A. Gray and Love.

Q. Wasn't even chartered then? A. No, sir.

Q. The title of the land was not in the corporation? A. Not until later.

Q. You say that in 1899, the fall when Mr. Wells came over, he agreed to take some stock and pay for it in cotton? A. Yes, sir.

Q. When did you first pay out money for Lorey? A. The first entry on our cash book, April 12th, 1900, but we had begun paying out money before that time. We had begun paying out money the first of the year.

74 Q. Who are we? A. John F. Love, treasurer of the Lorey Mills.

Q. Who elected you? A. I was not elected until after the organization.

Q. How much had you paid by Dec. 1900? A. In round figures, $250,000.00.

Q. Where did you get that money from? A. I received it from parties who agreed to take stock in the Lorey Mills.

Q. How much had you paid in at that time? A. $50,000.

Q. When did you commence to pay $50,000.00? A. On the 3rd day of Dec. 1900.

Q. On your own account? A. Yes, sir, I had paid in money before that, but was not shown on the books.

Q. Why not? A. Because the bank account was overdrawn; I paid it through the bank, but I never entered up the credit until Dec. 3rd.

Q. The business of 1898 and 1899 was very satisfactory between you and W. L. Wells Co. A. Yes, sir.

Q. How much had Mr. Gray paid in Dec.? A. Nothing.

—. How much has Mr. Gray paid in the Lorey Mills in all? A. $200.00.

Q. You said in a letter that you and Mr. Gray were largely interested in Lorey and yet he has only paid $200.00 to this good day. When did he pay that in? A. That was paid in the 8th of July, 1901.

Q. I want to ask you that commencing in the fall of 1900 that the Avon and Gastonia Mills didn't begin to fall down notably on your payments to W. L. Wells Co? A. They did not.

Q. Had not you fallen down wonderfully on your payments in 1899? A. We were a little behind once or twice.

Q. Didn't apologize in the most abject terms for your omissions to do what you had promised? A. Yes, sir, I did.

Q. I want to read you some of that correspondence?

First letter written Nov. 8th, 1899, by Wells Co. to John F. Love (p. 114).

Telegram Wells Co. from John F. Love, Nov. 10th, 1899 (p. 114).

Letter Nov. 10th, 1899, W. L. Wells Co. from John F. Love (p. 115).

I read you *a* another letter written by W. L. Wells Co. to you Nov. 13th, 1899, dictated by W. L. W. (p. 115).

Letter written by you addressed to W. L. Wells, Vicksburg, dated Nov. 15th, 1899 (p. 116).

I read you a letter of Dec. 21st, 1899, to John F. Love, from W. L. Wells Co. dictated W. L. W. (p. 117).

I will read you a letter written to W. L. Wells Co. by John F. Love, Dec. 22nd, 1899 (p. 117).

What bonds were these referred to in this letter? A. Town bonds.

75 Q. Did they belong to you? A. No, sir.

Q. Who did they belong to? A. The town of Gastonia.

Q. Town authorize you to use that money. A. Yes, sir, to put the money to their credit in the Gastonia Banking Co.

Q. That was the money that you were going to remit to Wells after you got that town money? A. Yes, sir.

Q. Where did you get that money to buy 800 bales of cotton with? A. I got it out of my business.

Q. In the mean time you owed Wells a great deal of money? A. We owed them some.

Q. How much? A. I don't remember.

Q. Didn't you hear the statement of J. T. Wells that you owed them for Ozark, Avon and Gastonia about $80,000.00; didn't you hear that they had bought for that 800 bales cash? A. Yes, sir.

Q. Didn't remet any to W. L. Wells? A. I did remit. I had promised a remittance and hadn't remitted.

Q. Why did you state first you did remit? Turn to your books and tell when you last remitted to W. L. Wells before Dec. 22nd, 1899? A. I remitted on Nov. 2nd, 1899, $22,720.23, and Dec. 5th, 1899, I remitted $15,203.91.

Q. The two mills still owed $95,000.00? A. On Jan. 11th, 1900, I remitted $17,835.00.

Q. What did you mean by extra interest in that letter? A. I meant any interest incurred by the delay we would pay it.

Q. I will read you a letter of Dec. 22, 1899, from W. L. Wells Co. to John F. Love, dictated W. L. W. (p. 117).

I read you a telegram dated Jan. 7th, 1900, from W. L. Wells Co. (p. 118).

Q. Did you answer that telegram? A. I think I did.

Q. Show the copy of your answer. A. I haven't got it here.

Q. Have you got your letter book here? A. No, sir.

Q. Were you in Gastonia all that time? A. I don't remember whether I was or not, I think I was.

Q. I read you a telegram dated Jan'y. 10th, 1900, to John F. Love, did you answer that? A. I think I did (p. 118).

Q. Can you show any answer to it? A. No, sir.

Q. I will read a letter Jan. 10th, 1900, John F. Love from W. L. Wells.

I read you a letter dated Jan. 16th, 1900, John F. Love, treasurer, Gastonia, N. C., signed W. L. Wells Co., dictated W. L. W. (p. 119).

I read you a letter written by you Jan'y. 17th, 1900, to W. L. Wells, signed John F. Love, vice-president.

A. Yes, sir, that is in reference to another mill—the Ozark Mill.

76 Q. You enclosed a check in that letter for that mill? A. Yes, sir, all we owed him.

Q. When did you buy that cotton? A. Latter part of Dec. I think. I have it entered up here 19th of Dec.

Q. Wasn't that cotton bought 30th of Oct. 1899? A. I don't know; I didn't keep the book of that concern.

Q. Would you recognize the invoice or the copy you kept of it? A. Yes, sir, I would. I didn't have anything to do with the mill; the secretary and treasurer gave me his check and asked me to remit it.

Q. Is that the invoice (presenting invoice to witness)? A. Yes, sir, Oct. 30th is the date.

Q. Was the invoice sent to you? A. No, sir.

Q. You got that invoice? A. It might have been sent to me, but it was sent over to the proper parties.

Q. That is your signature and that is your letter? (Counsel presented letter to witness.)

A. Yes, sir.

Q. In that letter you enclosed check for $13,000.00 and odd for Ozark? A. Here is the check that I received from the Ozark for that amount.

Q. What is the date of that check? A. 19th of Dec.

Q. You didn't send it until *until* Feb. 7th? A. Feb. 8th.

Q. Your letter is dated Feb. 7th; you got a check then for the amount of money and kept the money and you were being dunned and you knew Wells Co. were hard up and you kept that money until Feb. 7th; you have gotten these letters which I have read you in which Wells Co. explained their necessity for money? A. Yes, sir.

Q. You knew they needed their money? A. Yes, sir.

Q. You got that check when? A. 19th of Dec.

Q. On what Bank? A. Gastonia Banking Co.

Q. You didn't remit it to W. L. Wells Co., until Feb. 7th? A. No, sir.

Q. Why did you keep it there? A. I don't remember just now.

Q. Is that the best answer you can give to that question? A. Yes, sir.

Q. I read you a letter written by W. L. Wells Co. to John F. Love, dated Feb. 7th, 1900. That statement of Feb. 7th, 1900, showed $94,351.50, Gastonia Mills; $26,209.82, Avon; $53,311.78 Ozark; $13,633.04. You got that statement? A. Yes, sir (p. 47).

Q. That was correct? A. Yes, sir, unless it be the interest.

Q. Had you been owing this money a long time? A. No, sir, we had been owing them some money for a few months.

77 Q. Were they to carry this cotton for you indefinitely? A. They were going to carry $50,000.00 or $60,000.00.

Q. Only for a short while though; I read you a letter Feb. 9th, 1900, John F. Love, treasurer, signed W. L. Wells Co., dictated J. T. W. (p. 48).

Q. Did you write objection to that interest charged? A. No, sir.

Q. I read you a letter dated Feb. 12th, 1900, to John F. Love, Gastonia, N. C., signed W. L. Wells (p. 121).

I also read you a telegram dated Feb. 14th, 1900, to W. L. Wells from J. F. Love (p. 172).

I read you a telegram dated March 6th, 1900, to John F. Love from W. L. Wells Co. (p. 48).

I read the answer to that telegram, March 6th. 1900, to W. L. Wells from John E. Love (p. 49).

Q. I read you a letter of W. L. Wells Co., to you, dated March 6th, 1900, dictated W. L. W. Did you get that statement in there? A. Yes, sir, I think so (p. 49).

Q. Did you make any objection to it. A. No, sir, none. I remitted the balance separately when I paid them. On Jan. 13th I enclosed the original voucher for $17,835.00. March 3rd I remitted and enclosed original vouchers for $20,575.82 and March 12th $7,308.44.

Q. Turn to the account of Gastonia Mill with W. L. Wells Co. for March 1900; how much did you charge on W. L. Wells Co. account March 14th, 1900? A. I have it down the 12th, on that day I transferred the account from the Gastonia Manufacturing Co. to the Gastonia Banking Co.'s books for convenience (p. 139).

Q. What right had you to open an account with the Banking Co., of Gastonia for the W. L. Wells Co.? A. I didn't have any. I did it as a matter of convenience. I got New York checks from the Gastonia Banking Co. when I remitted.

Q. I want you to add up the amount the Gastonia Mill owed or had purchased in all the total amount of invoices from Oct. 21st, 1899, up to and including Jan. 29th, 1900. A. $57,204.87.

Q. Add up the amount you had remitted for Gastonia Mill up to March 14th in actual cash. A. $30,995.05.

Q. Does that include the $7,000.00? A. No. sir.

Q. You owed the total amount of invoices to Gastonia Mill from Oct. 1899 up to and including March 14th, $57,204.89. A. Yes, sir.

Q. Total payments up to March 14th were 30,995.05. A. I remitted that on March 10th.

Q. Did you charge it up? A. Yes, sir.

Q. I will just show this entry to the jury. How much did you

78 claim to have remitted on March 10th $7,310.44; that left how much due W. L. Wells Co. on March 14th? A. I made a mistake, $18,901.48.

Q. You have got them charged up on March 14th $26,211.82. How can you credit them with more than you remitted? A. I charged them with $26,000.00 and closed their account and transferred the difference to the books of the Gastonia Banking Co.

Q. Had you collected from the Avon Mills and Gastonia Mills? A. They had that to their credit.

Q. You are the Gastonia Banking Co.? A. Yes, sir.

Q. You collected this from the Avon and Gastonia Mills? A. Yes, sir.

Q. And charged it to them that day? A. Yes, sir, on the books of the bank.

Q. Did you notify Avon and Gastonia Mills of that? A. Yes, sir.

Q. You just took the exact balance that was due the W. L. Wells Co. of $18,000.00 and put it to the credit of the W. L. Wells Co. in the Gastonia Banking Co.? A. Yes, sir.

Q. Did you notify W. L. Wells Co. of it? A. No, sir.

Q. Did they know that they had a bank account there? A. No, sir.

Q. You opened it for your own convenience? A. Yes, sir.

Q. Wasn't it just as convenient to let that stand on the books? Had you ever done it before? A. I opened it for the Ozark in Dec.

Q. You did that in the single instance of the Ozark Mills in Dec. 1899? A. Yes, sir.

Q. Did W. L. Wells Co. know anything about it? A. No, sir.

Q. You held that money, as you said, there until Feb. 7th, following? A. Yes, sir.

—. Then the following month, just exactly 37 days afterwards you took some more money and put it in your bank to the credit of W. L. Wells Co.? A. Yes, sir.

Q. How long did you keep that money there? A. I remitted it when it was due in the summer.

Q. You had people to do business in there just like other banks, who deposited money; who checked it out? A. They checked it out.

Q. Who gave any checks on the W. L. Wells Co. in the Gastonia Bank; did they ever give any? A. No, sir.

Q. They didn't know they had an account there? A. No, sir.

Q. Why didn't you send that money to W. L. Wells Co., you knew

79 they needed it? A. Mr. Wells was undecided as to how much stock he would take in the Lorey Mill.

Q. Did that keep you from sending W. L. Wells Co. money to them? A. Yes, sir.

Q. How long were you going to keep it? A. Until the matter was decided.

Q. Who authorized you to do that. A. W. L. Wells.

Q. Why didn't you notify Mr. W. L. Wells that you put that money in the Gastonia Bank? A. Didn't think it was necessary.

Q. Did he ever tell you to do it? A. No, sir.

Q. You just did that on your own free will? A. For our convenience.

Q. After you put that eighteen thousand and odd dollars to the credit of the W. L. Wells Co., as you have stated, didn't you get a statement of account from them on April 2nd, 1900, as follows: John F. Love, treasurer, Gastonia, N. C.; enclosed please find statement of account to April 1st, showing balance due us $53,546.41. Please report on same, etc. Did you get that letter? A. Yes, sir.

Q. Did you object to that statement? A. No, sir.

Q. Interest was charged on that? A. I made a remittance.

Q. Did you remit all that $18,000.00? A. No, sir.

Q. Why didn't you? A. I remitted him a certain amount of balance amounting to $9,714.14.

Q. Why didn't you remit them their money, you had it there in the bank?

Q. The balance was not due; if they were due we were holding them until Mr. Wells had decided about this Lorey stock.

Q. Why didn't you notify the company about that? You didn't open your mouth. A. No, sir.

Q. Just kept that money? A. Yes, sir. I didn't think it was necessary to notify them.

Q. They were dunning you then? A. We were dunning them for their decision.

Q. You didn't resent his dunning you? A. No, sir.

Q. And you had the money there and didn't resent this? A. Yes, sir.

Q. Turn to your account of Avon on March 14th, 1900; how much did Avon owe W. L. Wells Co. for invoices up to March 14th, 1900? A. From Oct. 20th, $86,874.19.

Q. How much had they remitted to W. L. Wells Co. up to March 14th? A. $54,138.23.

Q. That included the remittance of March 6th? A. Yes, sir.

80 Q. How much did that leave them due the W. L. Wells Co.? A. $32,735.96.

Q. How much did you charge them with on the books of the Avon Mills March 14th? A. I charged them with that amount.

Q. Did you remit them that money $32,735.96 March 14th? A. That was treated like the $18,000.00.

Q. You collected this amount from the Avon Mills and put it to this account of W. L. Wells Co. in the Banking Co. of Gastonia. A. Yes, sir, I did.

Q. What is the total of the two? A. $51,637.34.

Q. Was this without W. L. Wells Co. knowledge or consent that you took $51,637.34 of their money and put it in your bank? A. Yes, sir, I did.

Q. They didn't know a thing about it? A. No, sir.

Q. And held it? A. Held it until the decision of the stock.

Q. How much stock was he going to take? A. $50,000.00 or $100,000.00.

Q. Who was going to take it? A. W. L. Wells.

Q. And you took this amount of money, $51,637.34, and held it? A. Yes, sir.

Q. Who authorized you to do that? A. W. L. Wells.

Q. When? A. In our town the summer of 1899.

Q. How did he authorize you? A. By word.

Q. If he authorized you to do that why didn't you notify him that you had done it? A. I was waiting his decision.

Q. Why didn't you notify him that you had done it and was waiting his decision? A. I didn't think it necessary.

Q. Did Wells tell you to hold it there until he decided? A. No, sir, but these balances were not paid and I was holding them until he decided.

Q. He didn't tell you to put that money in the bank. A. No, sir.

Q. You know Mr. Wells is a solvent man? A. I don't know.

Q. Hasn't he carried out everything with you? A. Yes, sir.

Q. Isn't he a man financially able to meet his obligations? A. Yes, sir.

Q. And yet you took this money and put it in your bank for what and why? A. I took it and put it in there for our convenience and waiting the decision about the stock matter.

Q. When did you commence to draw on that? A. On the 6th, of April, 1900, $9,714.22; the 4th of June, $16,000.00; Aug. 2nd, $9,206.30, charged him with $10,000.00 balance, and credited Lorey, which included a bill of Aug. 2nd of $3,283.13 and closed the account.

81 Q. On April 6th you remitted $9,714.22 out of that amount in the bank? A. Yes, sir.

Q. Had you any communication with Mr. Wells announcing his decision? A. No, sir.

Q. What made you change your convenient idea? A. He wrote me he wanted some money and I forwarded him some.

Q. I will read you a letter dated April 13th, 1900, to Mr. John F. Love, Gastonia, N. C., from W. L. Wells, you got that letter? A Yes, sir (p. 121).

Q. On May 7th, they sent you that statement W. L. Wells Co., $44,067.91; please investigate and report on same at your earliest convenience and oblige W. L. Wells Co. by T. J. W. You got that letter? A. Yes, sir, I did (p. 51).

Q. Did you object to that account? A. No, sir.

Q. Did you write to Mr. Wells or to W. L. Wells Co. that you were holding up a lot of money of theirs? A. No, sir.

Q. I will read you a letter dated May 18th, 1900, from W. L. Wells to J. F. Love; you got that letter? A. Yes, sir (p. 122).

Q. When Mr. Wells was in *Gatonia* in May, 1900, did you tell him that you had a lot of money of W. L. Wells Co. in the Gastonia Banking Co.? A. No, sir.

Q. Did you tell him that J. F. Love, as Gastonia Banking Co., had collected from the Avon Mill and Gastonia Mill some money? A. No, sir, I didn't think it was necessary.

Q. Did you think it was necessary to tell them what had become of the money that they were dunning you for? A. I simply transferred it to the bank for convenience. The mill was responsible for it.

Q. Then Avon and Gastonia Mill owed it? A. No, sir.

Q. How could he hold the mills for it if they didn't owe it? A. We couldn't hold it unless he gave permission to hold it.

Q. You were holding that money up there without their *permission*, doing it on your own account? A. Yes, sir.

Q. And you used it? A. Yes, sir.

Q. That is what you kept it there for: To use it? A. You mostly keep money for that.

Q. That is what you made that entry in the Gastonia bank for? A. No, sir, not specially.

Q. Mr. Wells visited Gastonia in May, 1900, as indicated in his letter to you of April 13th? A. Yes sir.

Q. What passed between you all about this subscription to the Lorey? A. We talked the matter over and considered Lorey matters and after staying with us a couple of days and visiting Charlotte he went back home undecided as to how much he would take.

Q. Then you made one remittance shortly after that? A. Yes, sir, I think so. I made two and on the 3rd closed the account.

82 Q. When did you make the first remittance? A. The fourth day of June.

Q. On the fourth day of June how much did you remit? A. $16,000,000.

Q. How much did that leave in the Gastonia bank? A. $25,923.12.

Q. I will read you a letter of June 4th, 1900, to John F. Love, Gastonia, N. C., from W. L. Wells Co., dictated W. L. W. What terms were those referred to in that letter? A. I don't remember (p. 123).

Q. You remitted $16,000.00 and kept $25,000.00 in the Gastonia Bank? A. Yes, sir.

Q. You got that letter I just read you? A. Yes, sir.

Q. I will read you a letter written by you June 19th, 1900, to W. L. Wells, Esq. In other words, after you got this letter of June 4th you kept this $25,000.00 and didn't remit any until June 19th? A. There was one bill of cotton making that $25,000.00 coming in due about that time (p. 123).

Q. The invoice you mean was shipped on the 22nd of June? A. Yes, sir.

Q. Then, notwithstanding this letter of June the 4th you kept this $25,000.00 there and didn't remit but ten of it on June 19th? A. Yes, sir (p. 123).

Q. Why didn't you remit it when you got this letter of June 4th; it was Wells Co. money? A. The bills were not all due, and furthermore we were waiting for that decision in reference to the stock.

Q. When was the last bill? A. 22d of June.

Q. The last bill sent you was the 22d of Jan. prior to that bill of June 22d? A. One bill was 22d of June.

Q. You said that was not included in the $25,000.00? A. That was one of the bills we owed him.

Q. How could you owe him a bill on the 22d of June and June 4th you got this letter? A. We didn't know it on June 4th.

Q. Then you had $25,000.00 of their money in the Gastonia Banking Co. and after getting that letter of June 4th you kept it there and didn't remit it? A. Yes, sir.

Q. Why didn't you? A. Waiting the decision about the stock matter.

Q. You hadn't gotten any decision on June 19th had you? A. No, sir.

Q. When you remitted this $10,000.00? A. No, sir.

Q. Why did you remit the $10,000.00 if you held the $25,000.00 waiting the decision about the stock? A. Because we had a letter from them requesting us to send them some money.

Q. That was June 4th, and you got that letter on June 6th; why

83 didn't you remit them $10,000.00 on June 6th? A. We remitted them $16,000.00 on June 4th.

Q. You have said that after you had remitted that $16,000.00 you had $25,000.00 of W. L. Wells Co's money in your bank; and on June 4th this letter was written to you and you got it in due course of the mails June 6th; why didn't you remit that $10,000.00 that you remitted to them on June 19th on June 6th? Why did you hold that $10,000.00 up that long? A. We didn't claim that it was all due and we were remitting as convenient for us. Mr. Wells said in Oct. that he would carry us for $65,000.00.

Q. How long? A. He didn't state the time.

Q. If you thought, Mr. Love, that you could keep money indefinitely, why did you submit to this letter and not answer it and call his attention that he was going to carry you for $65,000.00; who was to pay? A. Avon and Gastonia Mills.

Q. Had you already credited their accounts with this money you paid into the Gastonia Banking Company? A. Yes, sir.

Q. Had W. L. Wells Co. ever made any arrangement by which their money was to remain in that bank? A. No, sir, I wish to explain right there a matter that was probably misunderstood before the jury. I stated that I transferred that money from the Avon and Gastonia Mills to the Banking Co. for our convenience and it was just to simplify the work, and we had it on the books to the credit of Mr. Wells, of course, so as not show up, we remitted it as we contended it was due. It didn't benefit our bank one particle. We didn't transfer it in order to get the money in our bank. We didn't notify Mr. Wells of it, because we didn't think it was necessary. I want to say that it was no benefit to the Gastonia Banking Co., but simply a transfer of accounts for our convenience in remitting; as the bills came due we remitted and as Mr. Wells wanted money before we remitted he would write us a note and we could attend to it

Q. As I understand, all this money due by the Avon and Gastonia Mills was in the bank of the Gastonia Banking Co.? A. Yes, sir, I think so.

Q. Did it show up prior to the time you opened this account of W. L. Wells Co., on March 14th, on your books of the Gastonia Banking Co., to the credit of these mills? A. Yes, sir.

Q. Then on the same day that you credited Avon and Gastonia Mills, to-wit, March 14th, with money paid to W. L. Wells Co. on the same day, you debited the account of Avon and Gastonia at the Gastonia Banking Co. with these amounts and credited W. L. Wells Co.? A. Yes, sir.

84 Q. What did you go through all that for? A. I was doing it as a matter of convenience.

Q. Will you explain to the jury why it was more convenient to have that account that way? A. The account up to that time had stayed on the two books of Avon and Gastonia Mills. I transferred it to the Gastonia Banking Co. as one account and would remit Mr. Wells on account as shown by checks.

Q. When you wrote, June 19th, remitting that $10,000.00, and you said it is mighty scarce up here, I mean money, I will try and send you some more money, etc. You meant what you said? A. Yes, sir.

Q. You were keeping that $25,000.00 there that Avon and Gastonia had paid on that account? A. Not after that $10,000.00 was paid. I was keeping that $15,000.00.

You were keeping it because money was short?

Q. You never had any further communication with Mr. Wells?

I will read you a letter dated July 13*nd*, 1900, written by W. L. Wells to yourself (p. 58).

Q. That account contained an item of interest of $112.22, balance on account as rendered $21,722.51 to Aug. 1st. You got that account didn't you? A. Yes, sir.

—. You didn't make any objection to it? A. No, sir.

Q. On Aug. 3rd you debited W. L. Wells Co's account, $10,000.00 for stock? A. Yes, sir.

Q. Did you write W. L. Wells Co. about it? —. Yes, sir.

Q. When? A. You find it on the statement of Sept.

Q. Did you write to them that day? A. Yes, sir, you find it on the accounts.

Q. On Aug. 3rd? A. Yes, sir.

Q. Where abouts? A. You find we remitted $9,236.30 that day.

Q. You didn't tell them that you debited that account with $10,000.00? A. I think it is on there.

Q. Is that what you mean on this statement (referring to paper)? A. Yes, sir.

Q. Can you show the jury any entry on that, show $10,000.00 charged to W. L. Wells Co.? Invoice $3,283.18; account $5,923.12; Total, 9,206.30; that is all that you ever sent W. L. Wells Co. A. After receiving letter of July 13th he authorized us that he would take $10,000.00 worth of stock, I deducted $10,000.00, leaving a balance due on account of $5,923.12 plus an invoice of June 22nd $3,283.18, making a total of $9,206.30, for which we enclosed him a check and received back voucher marked "Paid."

Q. It didn't say balance on account, it simply said account? A. Yes, sir.

85 Q. Is that all you ever did in the shape of a notification at that time to W. L. Wells Co.? A. I believe it is.

Q. You had gotten a letter of Mr. W. L. Wells which he had written to you on May 18th, after he visited you in Gastonia, in which he said that he didn't want his subscription mixed up with the concern and not to pay it in that way?

Counsel read letter to witness. Understanding that you made that charge? A. Yes, sir.

Q. Didn't notify him in any other way than you said when you did it? A. No, sir, not at that time.

Q. Now the letter of July 13th that you have spoken of I will read that to you, written by W. L. Wells to John F. Love.

Q. What was that friend he referred to in that letter? A. I don't know. I suppose it was Mr. Willis.

Q. Didn't he tell you it was Mr. Willis? A. At one time he did.

Q. Hadn't he written to you on April 13th stating that he was going to bring my friend along with him? A. He said he was going to bring a friend along with him.

Q. He said my friend? A. I suppose he had more than one friend.

Q. Had he spoken of any one else in connection with this thing except Mr. Willis? A. I think so, when he visited us.

Q. Which visit? A. Summer of 1898.

Q. You got that letter I read you? A. Yes, sir.

Q. In the face of this letter of May 18th, telling you that he used this money in that way, in the face of that letter of July 13th, asking you to remit, you charged this $10,000.00 up? A. Yes, sir.

Q. And didn't notify them in any other way than you have stated? A. I did, later.

Q. At the time you didn't? A. No, sir.

Q. You got this statement of account up to Sept. 1st; I will read you that letter of Aug. 31st, written by W. L. Wells Co. dictated J. T. W. to John F. Love, Treasurer, Gastonia, N. C. On the bottom of this is endorsed in your hand writing $10,000.00 stock Loray, $2,691.67 interest; balance, $12,691.67. We wish to see your Mr. Wells about it when he comes to see us. What did you put that there for? A. Because I claimed the account was balanced off and I wanted to see Mr. Wells about it (p 59).

Q. If you had any authority to make that endorsement what did you want to see Mr. Wells about it for? A. He and I were doing the trading, and I wanted to see him and we would arrange matters.

Q. What did you want to see Mr. Wells about? A. Matters of interest.

86 Q. Didn't you receive statements right along showing interest? A. Yes, sir, but they were all invoices marked paid.

Q. Can you show statement of any sort of account from W. L. Wells Co. receipted in full? A. We remitted always by invoice and the invoices are marked Paid.

Q. I want you to answer this question specifically and directly, can you produce a single statement of account rendered you by W. L. Wells Co. receipted and paid in full? A. I cannot, because we didn't pay that way.

Q. Have you got all the invoices that W. L. Wells Co. sent you during these two years? A. I think so, they have all been produced in evidence.

Q. Mr. Wells visited you in Sept., 1900? A. Yes, sir.

Q. About what time? A. I think, about 25th or 26th.

Q. What was said at that time by you and Mr. Wells about this subscription? A. I spoke to him about his subscription of Lorey Mill and still insisted upon his decision as to the amount he would take and showed him a letter we had from W. C. Craig & Co., offering to take $100,000.00 stock in the Lorey Mill provided we would give them the purchasing agency for the cotton of our mills, and told him that we didn't wish to make a change at that time and if he couldn't succeed in getting his friend to take the $50,000.00 stock that we proposed, if he would take his $50,000, we would prefer continuing our business with him. After talking over the matter he told me that he thought he would take it and would let me know in a few days. He had never refused up to this time to take some stock but he was undecided as to the amount and we insisted on knowing definitely what we could depend on. He went home and Oct. 4th he wrote us a letter which you have in evidence saying that he would take $50,000.00 stock agreed upon.

Q. Now, that is all that passed between you about the stock at that time? A. I can't say that that is all that he said; that is the essence of it.

Q. Turn to the stock book of Lorey Mills and show the stock account of W. L. Wells; what does that show? A. W. L. Wells, 1900, Aug. 2nd by cash, page 8, on the cash book, 10,000.00.

Q. What is this entry here, April 24th, 1900, $50,000.00 stock? A. That stock was issued $50,000.00.

Q. That was stock issued to who? A. W. L. Wells.

Q. 1900? A. That ought to be 1901.

Q. It appears on this book April 24th, 1900? A. Yes, sir, that should be according to the journal, 1901.

Q. Whose entry is that? A. J. W. Ware, bookkeeper.

Q. Have you got any stock subscription? A. No, sir.

87 Q. Your stock book or stock account of W. L. Wells shows that on April 24th, 1900, you have charged him up with $50,000.00 of stock? A. Yes, sir.

Q. You have related the substance that passed between you and Mr. Wells? A. Yes, sir.

Q. Where did that conversation take place? A. We were together a couple of days, I think this particular conversation took place in the office of our store.

Q. Who was present? A. W. L. Wells and myself.

Q. It took place the night before he left? A. Yes, sir.

Q. Up to that time it had been tacitly understood that he was going ahead and purchase for the Avon and Gastonia Mills as he had done? A. Yes, sir.

Q. Then you took up the subject of the Lorey that night? A. Yes, sir.

Q. Didn't you tell Mr. Wells there, after showing him this letter of W. C. Craig & Co., or telling him about it, in which they offered to take $100,000.00 worth of stock if you would give them the buying of the Lorey cotton in connection with the other mills; that it was tacitly understood that he was going to buy for Avon and Gastonia Mills as usual? A. No, sir, I did not mean that. I only meant that he was to buy until we gave him orders not to buy.

Q. That was the understanding until you had that conversation that night? A. Yes, sir.

Q. Did you ever intimate a doubt that he was to continue to buy for the Avon and Gastonia Mills? A. No, sir.

Q. I will ask you this question, if there and then you didn't tell Mr. Wells that you had $940,000.00 bona fide subscription to the capital stock of the Lorey Mills? A. No, sir.

Q. Didn't Mr. Wells say to you that he couldn't take over $25,000.00 on his account, if that was so, to-wit, that you had $940,000.00 of bona fide subscription of the stock that he could get his friend, Mr. Willis, to take the other $25,000.00 and he would see about that when he went home and would write you and that $50,000.00 was to be paid in when the $940,000.00 was paid in, and that it was not to be paid until Jan. 1st and when the mill was built and organized? A. No, sir, he did not say that.

Q. Didn't he say he didn't want to get his friend into this concern unless it was an assured success and that they didn't want to pay this $50,000.00 until the $940,000.00 had been paid? A. No, sir.

Q. How much stock in point of fact was ever subscribed to the Lorey corporation in the North Carolina Charter? A. I didn't have any subscription book.

88 Q. How much did you estimate had been promised to it? A. From six hundred to eight hundred thousand dollars.

Q. How much in point of fact was paid in? A. $393,400.00.

Q. Didn't you represent generally to the public that $900,000.00 had been paid in? A. No, sir.

Q. Subscribed? A. No, sir.

Q. I will show you an advertisement, did you ever see that before? A. No, sir.

Q. Do you know of Abbott & Stephens? A. Yes, sir.

Q. I will read you a lettter dated April 21st, 1900, written by Abbott & Stephens to you; did you get that letter? A. Yes, sir, I think I did (p. 124).

Q. I will ask you to examine this letter of April 23rd; Counsel read this letter. Is that the advertisement referred to in that letter? A. I didn't see it in the paper. Mr. Abbott gave me a copy and I suppose that is the same.

Q. Is it your best impression that this is the same thing? A. I can't say, I think it is.

(Advertisement in the Textile Excelsior Saturday, May 12th, 1900, read in evidence by plaintiffs' counsel) (p. 124).

Q. Then you authorized Abbott & Stephens to advertise that all the stock had been taken except $100,000.00? A. I told them that I would give them the selling of $100,000.00.

Q. You said that advertisement was correct? A. The advertisement they sent me was something on that basis and I told them that they could go ahead and sell $100,000.00.

Q. After looking at that advertisement you wrote that letter? A. I think so.

Q. Why do you say you think? A. Because I don't know whether that is the advertisement or not. I can't swear to that. I don't know whether that is the copy they sent me or not.

Q. Didn't you tell Mr. W. L. Wells the same thing when he was there in Sept. except you had $940,000.00 subscription? A. No, sir.

Q. Didn't you tell him how much was subscribed? A. I don't think it was mentioned.

Q. He didn't ask that question? A. Not that I remember of now.

Q. Did you tell him that you had taken $10,000.00 of W. L. Wells Co. and paid for stock? A. It was not mentioned at that time.

Q. And you didn't mention it? A. No, sir.

Q. Why did you say in your endorsement on that letter that you

89 wanted to see Mr. Wells? A. I wanted to see him about the adjustment of the interest.

Q. Did you say anything about the interest? A. No, because it was undecided about what amount of stock he would take.

Q. You didn't mention that $10,000.00 credit on Aug. 3rd? A. No, sir, I had already notified the house about it.

Q. You never did notify them except this endorsement on this letter of Aug. 31st? A. No, sir, I don't think I did.

Q. I will read you a copy of a telegram you sent Sept. 12th, 1900, to W. L. Wells Co. (p. 125).

Q. I will read you a letter dated Oct. 1st, 1900, John F. Love treasurer to W. L. Wells (p. 126).

Q. I will read you a letter of Oct. 5th, 1900, written by W. L. Wells to John F. Love, Esq., Gastonia, N. C. (p. 126).

Q. You got that letter? A. Yes, sir.

Q. I will read you a letter written Oct. 9th, 1900, to W. L. Wells, signed John F. Love, treasurer (p. 127).

Q. You wrote that letter? A. Yes, sir.

Q. I will read you a letter Oct. 20th, 1900, written by W. L. Wells to John F. Love (p. 127).

Q. I will read you a letter that you wrote on Oct. 22nd, 1900, as treasurer to W. L. Wells (p. 128).

Q. I will read you a letter of Oct. 20th to John F. Love from W. L. Wells Co. dictated by J. T. W. You got that letter? A. Yes, sir (p. 127).

Q. I will read you a telegram of Oct. 25th, sent by W. L. Wells Co. to John F. Love (p. 129).

Q. I will read your answer Oct. 26th, to W. L. Wells Co., "Buy it." Signed, John F. Love (p. 129).

Q. I will read you a letter of Oct. 31st to John F. Love written by W. L. Wells Co., dictated J. T. W. (p. 130).

Q. I will read you a letter of Nov. 3rd written by John F. Love to W. L. Wells (p. 131).

Q. I will read you a telegram Nov. 12th, 1900, to John F. Love, sent by W. L. Wells Co. (p. 131).

I will read you your answer to that telegram dated Nov. 12th, 1900 (p. 131).

I will read a letter of Nov. 13th, 1900, John F. Love, treasurer, from W. L. Wells Co., dictated W. L. W.

I will read you a letter of Nov. 17th, 1900, to W. L. Wells, signed John F. Love, treasurer (p. 132).

Q. Had you perfected your arrangements? A. I had at that time.

Q. With whom? A. Loan Exchange Bank of Columbia, S. C.

Q. Why didn't you state that to W. L. Wells Co.? You had

90 been doing business with the National Surety Co.? A. We had perfected better arrangements with the Loan Exchange Bank of Columbia.

Q. How much did you borrow? A. $100,000.00 on our note.

Q. When did you get it? A. Nov. or Dec. of that year.

Q. If you had perfected your arrangements at that time why did you not have the money? A. We were waiting for it.

Q. I will read you a letter of Nov. 19th, 1900, W. L. Wells, Esq., and signed by J. F. Love.

Q. I will read you a letter of Nov. 21st, written by W. L. Wells to John F. Love. You got that letter? A. Yes, sir (p. 133).

Q. I will read you a letter of Dec. 18th, 1900, written by W. L. Wells Co., dictated by W. L. W. Did you get that letter? A. Yes, sir (p. 134).

Q. Did you make any answer to it about the money matters? A. I don't remember.

Q. Don't you know in fact that you did not? A. I don't remember.

Q. Have you got any copy of your letter here showing that you did? A. No, sir.

Letter of Dec. 20th to John F. Love, treasurer, written by W. L. Wells Co., dictated W. L. W. Read to witness (p. 135).

I will read you a letter written Dec. 22nd, 1900, by John F. Love to W. L. Wells (p. 136).

I will read you a letter of Dec. 22nd, 1900, written by W. L. Wells to Mr. John F. Love.

I will read you a letter written on Jan. 2nd, 1901, by W. L. Wells Co. to John F. Love, dictated W. L. W. (p. 137).

You got that letter? A. Yes, sir.

Q. Did you answer it? A. Not to my knowledge.

Q. I read you a telegram Jan. 31st, 1901, to John F. Love from W. L. Wells Co. Did you answer that telegram? A. I think I answered in a letter of Feb. 22nd (p. 138).

Q. Did you answer it to W. L. Wells Co.? A. No, sir.

Q. The telegram was from them? A. Yes, sir.

I will read you a letter of Feb. 22nd, 1901, written by you to W. L. Wells, Esq.

Q. What is that house you speak of in that letter? A. My dwelling.

Q. In the letter of Oct. 4th, 1900, which Mr. Wells wrote to you he says I am going to make a change in my present firm after this season and don't want my arrangement with you and the Lorey Mills known to the house, so in writing about this, please mark your letter "personal." That letter that *that* was written on Feb. 22nd, was marked personal; all these letters that you wrote about the

91 Lorey Mill were marked personal? A. I think all letters after Oct. 4th, 1900, were marked "personal." We didn't know any one else in the firm and we did all our business with W. L. Wells.

I will read you a telegram sent by Mr. Wells to J. F. Love, Feb. 4th, 1901 (p. 138).

I will read your letter of Feb. 5th, to Mr. W. L. Wells, Vicksburg (p. 138).

Q. When was the Lorey Co. organized under the North Carolina Corporation? A. On July 8th, 1901.

Q. Who was elected president? A. George A. Gray.

Q. What date was that? A. July 8th, 1901, at the first meeting of the Directors.

Q. Who were the directors? A. John F. Love, George A. Gray, Frost Torrence and W. A. Rankin.

Q. Who was elected vice-president? A. Didn't elect any that day.

Q. Did you notify Mr. Wells of that organization? A. I think so.

Q. What stock holders were present? A. There is a long list of them.

Q. Is Mr. Wells' name anywhere on that list? A. Yes, sir.

Q. Did you notify him of it? A. I think I did.

Q. Why do you answer that you think, don't you know? A. I prepared a notice to all those stockholders and I think I mailed one to all of them.

Q. Did you mail a notice to Mr. Wells? A. I think I did.

Q. Can't you give a better answer than that? A. No, sir.

Q. Was he present? A. No, sir.

Q. You represented him personally? A. I represented him by proxy.

Q. Where is the proxy? A. I haven't got it.

Q. You have had it? A. No, sir.

Q. How could you issue stock before it was organized? A. I don't know, but we issued it.

Q. Your stock book charged up to W. L. Wells shows April 24th, 1900; you say that is an error, it ought to be 1901? A. Yes, sir.

Q. You hadn't organized until July 8th, 1901; how could you issue stock before you organized? Who issued it? A. Geo. A. Grey and John F. Love.

Q. How did you sign it? A. George A. Gray, president, and John F. Love, treasurer. That was the understanding of the stockholders who paid in their money.

Q. As I understand you, you and Mr. Gray, on the 24th of April,

92 1901, assumed to issue stock before that company organized? A. Yes, sir.

Q. And Mr. Gray didn't have but $200.00 in it? A. No, sir.

Q. When did Mr. Gray pay in that $200.00? A. In July.

Q. When was it charged to him? A. Never was charged to him.

Q. Turn to Lorey stock account of Geo. A. Gray. A. July 8th, 1901, $200.00. The same day he is charged with stock $200.00.

Q. Then Mr. Gray was not a stockholder on April, 1901? A. The stock we held was held jointly, but I afterwards took it.

Q. Why didn't you charge it to him? A. Because it hadn't been issued to him.

Q. According to the books of the Company, as you have introduced here. Mr. Gray, on April 24th, 1901, and before the company was organized, assumed to act as a stockholder as president, and you as secretary, and issued that stock? A. Yes, sir.

Q. And you assumed to act as proxy for Mr. Wells when you didn't have one? A. Yes, sir; I did.

Q. Have you got the books of the Gastonia Banking Co. here? A. Yes, sir.

Q. Turn to the account of Avon Mills with W. L. Wells Co., Nov. 19th, 1900. How much did you charge W. L. Wells Co. up with that day? A. $3,283.48 and $23,967.70.

Q. How much cash did you remit to W. L. Wells Co. that day? A. I have it here, W. L. Wells Co. on account, $27,251.18.

Q. You charged them with that? A. Yes, sir.

Q. How much cash did you remit to them? A. I change that on Nov. 9th, 1900, we owed Mr. Wells for two invoices.

Q. I am not talking about that. How much cash did you remit? A. $27,251.18 from Avon Mills, which we credited to him.

Q. How much cash did you send them? A. We didn't remit them any on that day.

Q. What did you do with the money? A. Placed it to his credit in the Gastonia Banking Co.

Q. You took on Nov. 9th, 1900, $27,251.18, and credited to W. L. Wells Co. at the Gastonia Banking Co. Then that would show to Avon Mills stockholders that you had paid W. L. Wells Co. A. Yes, sir.

Q. Did you notify W. L. Wells Co. that you had done this? A. No, sir; the bill was not due for 30 days. We credited this, as I explained before, for *convience* on the books of the Gastonia Banking

93 Co. and remitted to him on Nov. 20th, about 19 days before it was due, $25,000.00 on account.

Q. You charged W. L. Wells on the books of the Avon Mills as so much cash. A. Yes, sir.

Q. And made a deposit slip in the bank? A. Yes, sir.

Q. And you credited up Avon Co. with that amount? A. I credited Wells Co. with that amount and charged it to Avon Mill as cash.

Q. Didn't say a word to W. L. Wells Co. about it? A. No, sir.

Q. What did you pay it into the bank before it was due for; you said these bills were not due the W. L. Wells Co. A. As we explained, we did it for our convenience knowing that when the bills came due we could get a New York check from the Banking Co. and remit Mr. Wells, and we remitted on Nov. 20th a check for $25,000.00 that was not due until Dec. 9th; and on Dec. the 3d a check for the balance of $15,357.59 both of which are in evidence.

Q. The usual method of banking is when a customer has a deposit in a bank he draws his own checks? A. Yes, sir.

Q. Then for your convenience you opened an unusual account by which you were to check on W. L. Wells Co's money? A. I didn't check it, I just opened that account in our bank as a matter of convenience and whenever the amount came due I went to the bank and got them to give me a New York exchange and forwarded it to them.

Q. Who made any terms with Gastonia Banking Co. for W. L. Wells? A. No one. I assumed to place that at his credit. That was entirely an act of my own.

Q. And you were the bank? A. Yes, sir.

Q. And kept the money? A. Yes, sir.

Q. Did you ever do any other customer that way? A. No, sir. *sir.*

Q. Did you ever hear of a bank opening up an account with a customer without his knowledge and taking it out as that bank saw fit? A. No, sir, as I said, Mr. Wells knew nothing about it. It was simply a matter of our convenience, our bank and our mills having the same office and we always got New York checks for Mr. Wells and when the bills came due we could get the checks and forward them to Mr. Wells.

Q. Was W. L. Wells Co. the only people to whom you all remitted by New York exchange? A. No, sir, not the only people. They were the only people we were buying cotton from.

Q. Suppose you had not made this entry and transferred this amount to W. L. Wells Co., as you say, the orderly method would

94 have been for Avon to give a check on the Gastonia Banking Co., when it was due? A. Yes, sir.

Q. For Gastonia Mill to have done the same thing and then you would have made out New York exchanges for W. L. Wells Co. and charged it to Avon and charged it to Gastonia? A. Yes, sir.

Q. And then you would not have had any other new account on your book at all? A. No, sir.

Q. Then you just opened up a new account as a matter of convenience when it was not necessary. A. According to your method we would have taken a check on Dec. 9th from Avon and Gastonia and got a New York check, but instead of doing this we placed this to Mr. Wells' credit in the bank and remitted him checks before they were due as he claimed he was short of money.

Q. You talked about these not being due, didn't you hear the correspondence I read here in which you were telling W. L. Wells Co. that you had arranged for money and that you were going to remit promptly? A. I recall that correspondence. I also recall that all balances are due 30 days from date.

Q. Is that so? A. That is the way I understand it.

Q You charged up on Dec. 3rd to that account of W. L. Wells Co. $40,000.00 of stock of W. L. Wells? A. Yes, sir.

Q. Did you notify W. L. Wells that you had done that? A. No, sir.

Q. Didn't you ever notify W. L. Wells Co. that you had done it? A. No, sir.

—. Why was it if you had authority to do it that you delayed until Feb. 2nd, 1901 when you had been dunned not only by letter but by telegram? A. For the simple fact that the bills were not due.

Q. Did you charge them on Dec. 3rd for $40,000.00? A. Yes, sir, but the bills were not due until the first of Jan.

Q. What time in Jan. were they due? A. About the first.

Q. They were all dated in Nov.? Q. Yes, sir.

Q. The latest one is the 28th of Nov. and the earliest one is Nov. 15th? A. Yes, sir.

Q. How much did you owe on Nov. 15th? A. I received one bill for $2,637.84; that was due Dec. 15th.

Q. You didn't remit? A. No, sir.

Q. You didn't write to them on Dec. that you had paid their account up in full? A. No, sir.

Q. You had collected it and charged it to them on the books of the mills and had the money there in the Gastonia Banking Co? A. Yes, sir.

Q. You said just now that you paid some that were not due? A. Yes, sir.

95 Q. Why did you do that? A. Because it was convenient to do it. I paid invoices of Nov. 9th on that other remittance.

Q. All would have been due the first of Jan.? A. Yes, sir.

Q. I call your attention to that letter again written on Jan. 2nd, 1901, "By the way, what about paying for our cotton, etc." You didn't answer that letter? A. I don't think I did (p. 137).

Q. Why didn't you notify them of that credit you paid Dec. 3*th*? A. As we agreed to pay these payments by the first of Jan. I thought of course it was not necessary.

Q. They were dunning you? A. I wrote him on Feb. 2nd.

Q. 30 days afterwards? A. Yes, sir.

Q. And you didn't write then until you got a dun by telegram? A. I don't remember.

Q. Didn't you get that telegram? A. I think I did (p. 138).

Q. Why do you say you don't remember? A. I don't recall the telegram.

(Counsel read telegram.)

Q. People are getting pretty anxious when they dun you by a telegram. A. Yes, sir, I think so.

Q. You submitted to the dun of Jan. 2nd, and it took a telegraphic dun before you said anything about this payment of Dec. 3rd? A. Yes, sir, that is so.

Q. I will read you your letter of Feb. 2nd. Why didn't you say in that letter I paid your stock on Dec. 3rd? A. The bills were not due until the first of Jan. and we agreed that they should not be paid until Jan. 1st (p. 62).

Q. But you had gotten a dun on Jan. 2nd, from the house? A. Yes, sir.

Q. Why didn't you say in this letter I paid your stock on Jan. 3rd? A. I thought he knew it.

Q. Did he tell you to pay it out of the cotton of W. L. Wells Co.? A. That was my understanding.

Q. Where did he say that? A. In a conversation with me.

Q. Whereabouts? A. Different times in Gastonia.

Q. I thought you said you gave the substance of the conversation on the night that it took place in Gastonia in Sept. 1900, in the office of Gray & Love? A. Yes, sir.

Q. You didn't say anything in that about Mr. Wells telling you to pay out of this firm's cotton? A. It was talked over at different times.

Q. That was the final understanding that night; you were rounding up the whole thing before he left? That was the last thing that was said that you have narrated? A. He said he thought

96 he would take the stocks and wanted the payments to come in about the 1st of Jan. and that he would let me know about it in a few days.

Q. That is all he said? A. He talked a good deal and that is among the things he said.

Q. That is the sudstance of what he said. A. I think so.

Q. There is nothing in that about paying for this stock out of the proceeds of the cotton of W. L. Wells Co.? A. We were talking about the purchasing of the cotton and the stock together and it was my understanding that it would come out of the cotton. That is what he told me.

Q. Why did you omit that in your first conversation? A. I didn't intend to.

Q. That you swear to in your answer is a part of the contract and you failed to state it here? A. I don't remember I meant to state it.

Q. What did W. L. Wells say in reference to that at that time about paying? A. We spoke of payinug the stock in, at that time 10 per cent per month it beginning 1st of Jan. previous; and he talked about taking stock and he wanted to know how to pay it and he wanted to know if I could let it come in with the payments of cotton about the 1st of Jan. I think you will find that also in one of his letters.

Q. What letter? A. I don't remember. Perhaps the letter of Oct. 4th.

(Counsel read letter of Oct. 4th.)

Q. Did you agree to the manner of payment of stock? A. Yes, sir.

Q. That was before it was agreed to be taken? A. He had already paid in $10,000.00.

Q. What were you speaking about that for? A. He was talking about taking more.

Q. How did you suppose that you and Mr. Wells were going to keep this away from Mr. Butterworth and Mr. John T. Wells if it was to be paid out of the firm's cotton as you say? A. We didn't know how we would arrange it, he left it entirely with me.

Q. You wanted Mr. Wells to buy the cotton for the new mill individually? A. Yes, sir.

Q. In your answer you say that afterwards, to-wit, in Jan. 1901, according to the terms of the contract, you paid out on account of said cotton, etc.,——? A. Yes, sir.

Q. What do you mean by that? A. We meant that the Jan. payments were turned over to the Lorey as on our books entered up on Dec. 3rd.

97 Q. According to your statement $10,000.00 had been paid Aug. 3rd, 1901? A. Yes, sir.

Q. And $40,000.00 had been paid Dec. 3rd, 1901? A. The Avon and Gastonia Mills anticipated payments in order to assist the Lorey Mill.

Q. Hadn't it been paid to the Lorey? A. Yes, sir.

Q. What do you mean by this telegram in your answer? A. I meant that the Jan. payments went to the Lorey.

Q. I don't understand you. A. $10,000.00 had been paid on Aug. 3rd, and $40,000.00 on Dec. 3rd, 1900, that was paid to the Lorey.

Q. What payment did you make in Jan.? A. This pay- was entered on our book on Dec. 3rd.

Q. Are the books of the Lorey credited with the payment of Aug. 10th? A. Yes, sir.

—. When? A. Aug. 2nd, 1900.

Q. That was Lorey's money? A. It was turned over to Lorey and paid out.

Q. Then on Dec. 3rd, 1900, Lorey was credited with $40,000.00 paid it? A. Yes, sir.

Q. How could you pay any more money to Lorey; they were the only two accounts charged to Mr. Wells. What do you mean by this paragraph in your answer? A. We meant the two payments of Aug. 2nd and Dec. 3rd.

Q. Is that paragraph true that I have just read in your answer? A. Except $688.08.

Q. I want you to read the paragraph yourself to the jury.

(Witness read paragraph to jury.)

Q. That is your signature to the oath? A. Yes, sir.

—. Please explain to the jury how if you had paid in Dec. 3rd, 1900, the balance of $40,000.00 of the Lorey Mill, making a total of $50,000.00, how could you pay out any more in January? A. I didn't pay any more in January.

—. Then that paragraph of your answer is not true? A. Not in that sense, it is not.

Q. Mr. Wells visited you at Gastonia on July 31st, 1901? A. I think about that time.

Q. You had some conversation there with him? A. Yes, sir, every time he visited me.

Q. Didn't you tell him then that you had only had $343,00 stock paid in and subscribed to Lorey? A. I don't remember.

Q. Did you or did you not? A. I don't think I did.

Q. Didn't you in that conversation tell him that this enterprise had fallen down and that you would have to reorganize it? A. We talked about the matter.

98 Q. Didn't you tell him that? A. Not in those words.

Q. Didn't you tell him you were reorganizing it? A. I think so.

Q. That you had a meeting on July 10th for that purpose? A. Yes, sir.

Q. Didn't you tell him you were going to get him $50,000.00 worth of preferred stock? A. No, sir.

Q. Didn't he tell you he would not take common stock? A. He said he would take half common stock and half preferred.

Q. Didn't he insist upon having preferred stock in the Maine corporation at that conversation in July, 1901? A. He may have at that time.

Q. And didn't you promise to get it for him? A. I told him I would if I could.

Q. Didn't you show him a notice at that meeting of the stock holders of the old corporation? A. I don't remember, I was not well at that time.

Q. I will show you that notice.

(Counsel presented paper to witness.)

Q. Do you recognize it? A. Yes, sir, it is a notice of a meeting of the stock holders of the Lorey Mill (p. 154).

Q. I will ask you if in that conversation that you had with Mr. W. L. Wells in Gastonia on July 21st, if you didn't reach into your drawer and pull out this notice and hand it to him? A. I don't remember.

Q. Did you, or did you not? A. I think I did.

Q. Didn't you say you didn't send him this notice or one to Mr. Lineberger, or that you would bust the thing up if you could not carry out your views or get Mr. Wells preferred stock; did you or did you not say this? A. I don't think I did.

Q. Didn't you at that time say to Mr. Wells that you had purposely withheld this notice and didn't send it to him and also did not notify Mr. Lineberger and that your purpose was to have an organization of the Maine concern carried out according to your understanding and wishes, and, if it was not, that you would then bust up the organization? A. No, sir, I did not.

Q. Why did you withhold it? A. I don't remember.

Q. Didn't Mr. Wells deny to you that he was a stock holder? A. I don't think he did.

Q. Didn't he repudiate that he was a stockholder? A. He talked both ways. He said he would take the stock and he said that he would not.

Q. Didn't he tell you that you hadn't complied to the conditions upon which he had subscribed and that he repudiated? A. I don't think he did.

Q. Did he or did he not? A. He did not.

Q. I will ask you if Mr. Wells didn't leave there with the understanding that he would come back in August and get $50,000.00 worth of preferred stock? A. I couldn't make him any promise.

Q. Didn't you tell Mr. Wells you would do it if you could? A. Yes, sir.

Q. Didn't he come back on the 16th of Aug.? A. About that time.

Q. It was the day of the stock holders' meeting? A. Yes, sir, the 16th.

Q. Didn't you tell him then that you couldn't get him the $50,000.00 stock until after the organization? A I think I did.

Q. Didn't you tell Mr. *Well* then that you wanted him to go into that meeting? A. Yes, sir.

Q. And he declined? A. Yes, sir.

Q. Then the meeting was held? A. Yes, sir.

Q. Didn't you come out and tell Mr. Wells that everything was alright and that you would have $50,000.00 worth of preferred stock for him when he came back from New York? A. No, sir, I told Mr. Wells that he had been very kind to us and that I would do everything I could for him, but I could make him no promise.

Q. When Mr. Wells came back the latter part of Aug. you then told him you couldn't get this stock? A. I think I did.

Q. Didn't you tell him that you would get it for him in a week or ten days or thought you could? A. I told him I thought I could get a part.

Q. Didn't you tell him you could get it all? A. No, sir, I did not.

Q. Mr. Wells came back to Charlotte? A. I think so.

Q. And waited about two weeks? A. Yes, sir.

Q. And went back to see you? A. Yes, sir, two or three times.

Q. Didn't he come to Gastonia to see you on Friday the 13th of Sept. 1901? A. I don't remember the exact date, he was down there several times.

Q. Didn't you then tell him that you couldn't get the $50,000.00 worth of stock and didn't Mr. Wells tell you for the first time that if you would get $25,000.00 of preferred for his friend that he didn't want him to lose anything, that he would take $25,000.00 of common stock for his part and that the two mills were to pay up the balance in cash. A. I told him I would do what I could for him.

Q. Didn't you tell him also in that conversation that you were going to do that as soon as you got the money from the Lorey

100 organization and that you would send him that balance in cash and the $25,000.00 of preferred and the $25,000.00 of common? A. I made no positive promise, I told him I would if I could.

Q. Didn't you promise in any event you would send that balance in cash? A. No, sir, I did not.

Q. I want to repeat that over to you again; didn't Mr. Wells in that conversation on Sept. 13th, 1901, and didn't you agree at that time that you would send $25,000.00 in common stock and $25,000.00 in preferred stock and pay the balance out of the funds of the new Lorey organization and that Mr. Wells was to give his individual check to the concern of W. L. Wells Co. A. Mr. Wells had shown me a couple of drafts for $25,000.00. I suppose they were to pay for the stock.

Q. Didn't he tell you he would turn these drafts over to you when you did that and that he would give his check of $50,000.00 to W. L. Wells Co.? A. No, sir, not to my knowledge.

Q. You deny it? A. Yes, sir.

Q. Do you recollect my visiting you about the 31st of Oct. 1901? A. Yes, sir.

Q. Do you recollect the conversation I had with you in the office of Gastonia Banking Co. in Gastonia when I called your attention to the fact that you had failed to send that $25,000.00 of common stock and that $25,000.00 of preferred stock and that balance in cash, whatever it was, I don't remember the exact amount? A. I don't remember that.

Q. And that you hadn't done as you agreed and you admitted that you hadn't? A. I do not.

Q. I will ask you if I didn't say to you then, Mr. Love, you have collected that balance in cash for the Lorey Mill, why didn't you send that, and you said, My necessities were so great I have used it? Didn't you tell me that? A. I think I did.

Q. I will ask you, Mr. Love, if I didn't say to you, these gentlemen, W. L. Wells Co., have no desire to press you, and if you will put this thing in shape and give the notes of the two mills of $5,000.00 a month with 6 per cent interest with $100,000.00 of common stock as collateral, that I thought that I could get them to agree to do it and would telegraph them; and why didn't you tell me to telegraph? A. You made a proposition, as I remember, that if we would give our notes for the whole amount and this $100,000.00 stock as collateral, and that you thought that they would accept it.

Q. Didn't you agree to it? A. No, sir.

Q. Didn't I go to the telegraph office and subsequently come back with a telegram saying if you would do that and give $150,000.00 of common stock and get Mr. Gray to endorse it and

101 Mr. Love and the directors that that would be satisfactory and didn't you tell me then that you would show it to Mr. Gray and that you thought it would be done? A. I told you I would see Mr. Gray and let you know about it.

Q. Didn't you tell me you thought it would be done? A. No, sir.

Q. Didn't you tell me that Mr. Gray declined to endorse it, and thought that the Avon and Gastonia Mills were good enough for the amount? A. I told you we declined to do it because if we signed these notes that would lay us liable to take this Lorey stock and that we declined to do that. I had told you, also Mr. Wells, that we were figuring with Mr. Friere to sell the mill and if we did so we would be able to get Mr. Wells this money for his stock; but that if it failed to go through and we signed these notes we would be responsible for it and in that case we declined to do it.

Q. Didn't you, after seeing Mr. Gray, put your refusal on the ground that Mr. Gray declined to do it and thought that the notes of the mills were good enough? A. I declined it on account of accepting this $50,000.00 stock of Mr. Wells.

Q. Didn't I tell you there was nothing left but a suit and that I would have to come to Charlotte and sue in the United States Court? A. Yes, sir.

Q. And didn't you for the first time say anything about this stock that is in dispute here? A. I think it was the first time, but I had had it in my mind all the time.

RE-DIRECT EXAMINATION.

Q. On the 14th day of March, 1900, you can state how much the Avon Mill had on general deposit in the Gastonia Banking Co. A. $47,538.13.

Q. Does that appear on the books of the Gastonia Banking Co.? A. Yes, sir.

Q. How much did the Gastonia Manufacturing Co. have on general deposit in the Gastonia Bank? A. $17,061.79.

Q. Whose check were these deposits subject to? A. Check of John F. Love, treasurer of Gastonia and Avon Mills.

Q. Didn't any one else have the authority to draw that money out of the Gastonia Banking Co.? A. None whatever.

Q. Are these the deposit slips you used in transferring that money from these two cotton mills to W. L. Wells Co. account? A. Yes, sir.

(Deposit slips offered in evidence by defendant) (pages 139, 140 & 141).

Q. In whose handwriting is the deposit of $32,735.96 on the Avon account? A. Mine.

102 Q. Was it made on the date that deposit slip appears dated? A. 14th of March, 1900.

Q. In whose hand writing is this deposit slip in reference to Gastonia Manufacturing Co.? A. Bookkeeper, Mr. Jas. A. Page.

Q. What date was that made on? A. March 14th, 1900.

Q. Where is Mr. Page? A. Right here.

(Deposit slips marked Exhibit A. 2 and P. 2 offered in evidence by defendant.)

Q. In transferring these accounts from the cotton mills to the Gastonia Banking Co. did you assume to act as the agent of W. L. Wells Co.? A. No, sir.

Q. Were the deposits in your bank decreased or increased by making that transfer? A. Was not changed a cent.

Q. Did you personally or representing your bank gain any pecuniary or other advantage by making that transfer? A. None whatever.

Q. Then why did you do it? A. I transferred them in order to keep the two accounts together so that when I remitted Mr. Wells for these invoices I would just go to the Gastonia Banking Co. and get the New York drafts. If I had remitted without doing that, it would have caused my getting a check from each mill. It was simply a matter of no importance, but saved me a little work.

Q. How did the Wells Co. render these accounts against you for the Gastonia Manufacturing Co. and Avon Mills? A. Rendered to each mill separately.

Q. Did they consolidate them? A. The statements were together.

Q. How did you ordinarily remit to them? A. Together.

Q. Did you send them a separate check for the account of each mill? A. No, sir, I always remitted one check.

Q. Why did you do that? A. To save trouble.

Q. How did you save trouble? A. By taking these amounts and crediting them up to the Gastonia Banking Co. and getting one check for the amount. It always saved bookkeeping.

Q. If you had not transferred these two accounts to these two mills to Gastonia Banking Co., would you have remitted to W. L. Wells any quicker than you did? A. No, sir.

Q. I believe that Mr. Wells visited you on the 10th of May, 1900? A. Yes, sir.

Q. Did he make any demand on you for any money while he was in Gastonia? A. No, sir.

103 Q. Did he say anything to you about what the mills owed him then. A. No, sir.

Q. Look at that letter dated May 8th, 1900, and read it. Did you say anything to Mr. Wells about fixing that account up when he was there? A. No, sir.

Q. Had you written anything to him about it? A. No, sir.

Q. Do you know why he happened to make that statement in that letter? A. No, sir.

Q. Turn to your book in reference to that entry of the 10th or 14th and explain and show to the jury how that entry was made? A. Our custom in posting our books when we posted the cash book we went until we got to the bottom of the page; in posting these two entries on the 10th and 14th of March you find on the cash book page 123 we paid out on the 10th of March W. L. Wells, invoices nine, ten, eleven, $7,308.44. On the 14th of March as shown you on the cash book we charged W. L. Wells Co. with $18,901.38 that being transferred to the Wells Co. credit in the Gastonia Banking Co.

Q. In whose hand writing are these entries made? A. Mr. Ware's.

Q. Where is he? A. In the court room.

Q. Will you state how much stock Mr. Wells agreed to take when he was at your place in the fall of 1899? A. $10,000.00.

Q. State whether or not that was the original $10,000.00 he referred to in his letter of July 13th, 1900? A. It was.

Q. Did Mr. Wells know the conditions under which that stock was to be paid for? A. Yes, sir.

(Letter dated Oct. 7th, 1899, addressed to W. L. Wells, signed by John F. Love, treasurer, offered in evidence by defendant) (p. 141).

Letter dated Oct. 28th, 1899, to W. L. Wells signed by John F. Love, treasurer, offered in evidence by defendant (p. 142).

Q. Did you write that letter? A. Yes, sir.

Q. Did you ever receive any reply to that letter? A. I think so.

Q. Do you have any recollection whether he specifically replied to this letter? A. Don't think he did. I am not sure about it.

Q. In May, 1900, when Mr. Wells visited you, how much of his stock subscription was in arrears? A. All.

Q. How much was due? A. 10 per cent from Jan. 1st.

Q. Five months? A. 50 per cent.

104 Q. How much would that be? A. $50,000.00.

Q. Say anything about paying that? A. Not at that time.

Q. In reference to the invoices you sent the Wells Co. on the 31st of July, 1900, enclosing them a check for $9,006.30 with that credit on it; did W. L. Wells at any time after that up to Aug., 1901, question the correctness of that statement? A. No, sir.

Q. With reference to the letter that you wrote Mr. W. L. Wells on the 2nd day of Feb. 1901, is this the only reply you ever got to it?

(Counsel read telegram from W. L. Wells.)

A. Yes, sir.

Q. Did you answer that telegram? A. Yes, sir.

Q. From the time that telegram was sent you up to the time Mr. Wells visited you in Aug. 1900, in Gastonia, did he ever write you or telegraph you or say anything to you in any way denying the correctness of that charge of $40,000.00? A. He did not.

Q. You were asked this morning in reference to the issueing of stock on the 24th or April, 1900; I want to ask you if when the directors of that company were elected or when the stockholders met on the 8th of July, 1901, what action they took with reference to what you as secretary and treasurer and Mr. Gray as president had done for the company? A. They ratified what we had done.

(Minutes of the meeting of the stock holders of the Lorey Mill offered in evidence by defendant, pages 2 to 26 inclusive) (p. 142 to 152).

Q. Turn to your stock book and explain the item or the date there April 24th, 1900, when the stock was issued? A. The ledger shows here on April 24th above it is 1900. The 1900 I think was put there some time before this entry was made.

Q. Who made the entry? A. Mr. Ware.

Q. Have you got any way of showing when the entry ought to have been made? A. It was made from the journal.

Q. Look at your journal. A. On page 2 of the journal, 1901, April 24th, posted to page 202 on the ledger April 2nd. 1900, stock $50,000.00, W. L. Wells.

Q. Will you please explain how it was Messrs. Abbott & Stephens had anything to do with the Lorey stock? A. We had a communication from them along about that time asking us to give them an option on some of our mill stock, that they had some friends north that they thought would take some of it. We did give them an option on four of our mills. In talking to Mr. Abbott in reference to the Lorey Mill I told him that we had been talking to a

105 party and we had placed $900,000.00 and we could give him an option on $100,000.00 for 30 days.

Q. Read the last clause of this letter introduced in evidence.

(Witness read letter.)

A. He sent us the advertisement and we gave him the option and didn't say anything at all about it and he knew the situation of affairs.

Q. You told him the status of affairs? A. Yes, sir.

Q. He says there the advertisement is in a different way? A. Yes, sir.

Q. That is the way you approved it? A. Yes, sir. When we told Mr. Abbott we said we had in sight $900,000.00, times were good and we were expecting to place it all, but failed to do it, and he failed to place any stock for us, also.

Q. I read you this telegram on Sept. 12th, 1900, from you to W. L. Wells Co. prior to the sending of that telegram. I will ask you if you had received this letter? A. Yes, sir, I think it came in about the same time (p. 125).

Q. What is the date of that letter? A. Sept. 10th, from W. C. Craig & Co., Vicksburg, Miss.

Letter offered in evidence by defendant (p. 171).

Q. Did the writing of this letter from W. C. Craig & Co. have anything to do with your sending that telegram to Wells Co.? A. Yes, sir, we wanted to see Mr. Wells and know what he was going to do, because we wanted to get the matter settled. He had been talking to us for about a year and had never decided what stock he would take.

Q. Your telegram was dated Sept. 12th? A. Yes, sir.

Q. In reference to a letter written by you to Wells Co., on Oct. 1st, 1900, making an order for cotton, will you tell why you ordered cotton from them at that time? A. We were waiting on him to give us a decision and were short of cotton.

Q. Did you have any place to get it from then? A. No, sir, we had been buying all of our cotton from Mr. Wells.

Q. Could you get the kind of cotton you were using here? A. No, sir, we had to get it from Mississippi.

Letter dated Dec. 22nd, 1900 from W. L. Wells Co. to John F. Love, read in evidence by defendant (p. 136 & 137).

Q. That was in reference to stock in another mill that Mr. Craigh had taken? A. Yes, sir.

Q. What about the nuts to crack? A. That was just a little piece of irony.

Q. What mill was he referring to, the million and a half mill? A. That was the Lorey Mill. The other $10,000.00 stock was a mill in South Carolina.

106 Telegram of Feb. 4th, 1901, to John F. Love from W. L. Wells read in evidence by defendant (p. 138).

Q. You answered that telegram? A. Yes, sir.
Q. Didn't Mr. Wells ever reply to that letter? A. No, sir.
Q. The letter as introduced in evidence this morning? A. Yes, sir.
Q. Turn and look at Lorey Mill book and state when the W. L. Wells Co. was credited with stock subscription of $50,000.00? A. Aug. 2nd, 10,000.00.
Q. Look at that paper and state what it is? A. It is the deposit ticket on the Lorey Mill of W. L. Wells of $10,000.00; it is in my hand writing, it was made out July 31st, 1900.

(Deposit ticket offered in evidence by defendant and marked Exhibit R. 2) (p. 140).

In transferring it it is on our book Aug. 2nd.
Q. Look at that paper and state what it is? A. Deposit ticket of W. L. Wells Lorey Mill, Dec. 3rd. I made that out myself, entered it on cash receipt of Lorey Mill.

(This deposit ticket offered in evidence by defendant and marked Exhibit Q. 2) (p. 141).

Q. In whose hand writing are both these entries made on the Lorey books? A. J. White Ware.
Q. Look at the accounts of the Gastonia Manufacturing Co. and Avon Mills and state how much these two mills owed W. L. Wells Co. on the 31st of July, 1900, from their books and your bank account? A. Our books are square.
Q. How were they squared? A. This entry of March 14th had paid it off.
Q. Then they owed nothing? A. No, sir, nothing at all.
Q. How much did the Bank Co. owe W. L. Wells Co. on that day? A. Nothing at all.
Q. How was it squared? A. On July 13th we forwarded them a check for $5,923.12 and credited the Lorey $10,000.00 as shown by deposit ticket.
Q. We owed Wells Co. $15,923.12, we forwarded them a check for $5,923.12.
Q. State what that paper is. A. Deposit ticket dated Dec. 3rd.
Q. In whose hand writing is it? A. Mine.

(Deposit ticket offered in evidence by defendant and marked Exhibit S. 2) (p. 140).

107 Q. How much stock did you subscribe for in the Lorey Mill? A. No particular amount.

Q. How much did you pay for? A. $100,000.00.

Q. In the reorganization, what kind of stock did you get in the Maine corporation? A. Common stock.

Q. Did you own any preferred stock? A. No, sir.

Q. What kind of stock did all the stockholders of the old Lorey Mill who had paid in their subscription get? A. Common stock.

Q. Did you pay in your subscription of $100,000.00? A. Yes, sir.

Charter of Lorey Mills offered in evidence by defendant.

L. L. Jenkins Introduced by Defendant.

Q. Are you acquainted with Mr. John F. Love? A. Yes, sir.

Q. Where do you live? A. Gastonia; I have known him since 1883.

Q. Have you lived in the same town with him since that time? A. Yes, sir, we lived in Charlotte together.

Q. How long have you been living in Gastonia with him? A. Since 1888.

Q. Do you know his general character? A. Yes, sir, it is good.

B. G. Bradley Introduced by Defendant.

Q. Where do you live? A. Gastonia.

Q. How long have you lived there? A. 60 years.

Q. Do you know Mr. John F. Love? A. Yes, sir. I have known him for 15 or 20 years.

Q. How long have you lived in the same town with him? A. 15 or 20 years.

Q. What office do you hold in that town? A. None.

Q. Have you held any in that town? A. I was a justice of the peace up to two years ago.

Q. Do you know Mr. Love's character? A. Yes, sir, it is good.

J. K. Dixon Introduced by Defendant.

Q. Where do you live? A. Gastonia.

Q. How long have you lived there? A. Two years, but I lived there four years ten years ago.

108 Q. Do you know Mr. John F. Love? A. Yes, sir.
Q. How long have you known him? A. 20 years.
Q. Do you know his general character? A. Yes, sir.
Q. What is it? A. Good.

E. N. LINEBERGER INTRODUCED BY DEFENDANT.

Q. Where do you live? A. Gastonia.
Q. How long have you lived there? A. Since 1888.
Q. Do you know Mr. John F. Love? A. Yes, sir, I have known him since 1888.
Q. How near have you lived to him? A. Close neighbors.
Q. Do you know his general character? A. Yes, sir, it is good.

W. T. RANKIN INTRODUCED BY DEFENDANT.

Q. Where do you live? A. Gastonia.
Q. How long have you lived there? A. Ten years.
Q. How long have you known Mr. John F. Love? A. All my life. Known him intimately for ten years.
Q. Do you know his general character? A. Yes, sir, it is good.

J. E. PAGE INTRODUCED BY DEFENDANT.

Q. Where do you live? A. Gastonia.
Q. How long have you lived there? A. From '75 to '81 and from '83 to the present time.
Q. Have you known Mr. John F. Love? A. Yes, sir, ever since he has been there.
Q. How long has he been there? A. 12 or 15 years.
Q. Do you know his general character? A. Yes, sir, it is good.

DR. G. H. DETWILDER INTRODUCED BY DEFENDANT.

Q. You lived in Gastonia? A. Yes, sir, 1901, 1900 and 1899, three years.
Q. During that time did you know Mr. Love? A. Yes, I was in Gastonia, three years and a half.
Q. How long have you known him? A. Only the time sir.
Q. How far did you live from him? A. I was his next neighbor.
Q. You are a minister of the gospel, Methodist church? A. Yes, sir.

109 Q. Do you know his general character? A. Yes, sir, it is good.

W. H. LEWIS INTRODUCED BY DEFENDANT.

Q. Where do you live? A. Gastonia.
Q. How long have you lived these? A. 14 years.
Q. Have you known Mr. Love in that time? A. Yes, sir.
Q. What position have you occupied? A. I have been a lawyer and mayor of the town.
Q. Are you mayor now? A. No, sir.
Q. Do you know the general character of Mr. Love? A. Yes, sir, it is good.

CROSS-EXAMINATION.

—. You don't know his character any better having been mayor? A. No, sir, except he was one of the aldermen during that time.

W. R. CRAIG INTRODUCED BY DEFENDANT.

Q. You live in the State of Mississippi? A. Yes, sir, Vicksburg.
Q. What is your busines threr? A. Cotton buyer.
Q. Are you connected with any firm? A. Yes, sir, I am a member of the firm of W. C. Craig & Co.
Q. You belong to the firm that wrote the letter that was read here? A. Yes, sir.
Q. Have you heard of the business that was talked about here and written about as to the value of a certain agency for buying cotton as to what it is worth? A. Yes, sir.
Q. What is that business worth?

(Objection by plaintiff; overruled; testimony admitted; exceptions.)

A. I should say it would be worth from $25,000.00 to $40,000.00 a year.
Q. You mean for all these other mills? A. Yes, sir, for all four cotton mills.
Q. Do you know who made the contracts and did the principle part of the business of the firm of Wells & Co.? A. I know them simply as competitors on the market; W. L. Wells does the buying principally.
Q. That is W. L. Wells that was sworn here yesterday? A. Yes, sir.
Q. Do you know who the other two members of the firm are? A. Mr. Butterworth and Mr. J. T. Wells, I know them both.

110 Q. What business are they engaged in? A. J. T. Wells is a member of the firm of Lucket & Wells and Mr. Butterworth is doing business under the name of Geo. Butterworth & Co. I have had no direct business with him, but I have understood that he is in business for himself this year.

CROSS-EXAMINATION.

Q. You are a competitor of W. L. Wells Co.? A. Yes, sir, we are in the same line of business.

Q. You stated just now you were a *competor*? A. Yes, sir.

Q. You live in Vicksburg, Miss.? A. Yes, sir.

Q. When did you leavr there? A. Last Friday night.

Q. Where did you come to? A. Gastonia, N. C.

Q. Who met you at the depot? A. I didn't get off at the depot; I got off at the crossing of the narrow guage and main line.

Q. Who met you? A No one.

Q. Where did you go to? A. Hotel.

Q. See Mr. Love? A. No, sir, not until after I went to the hotel.

Q. Did he know you were coming? A. Yes, sir.

Q. He wrote you to come? A. No, sir, I telegraphed Mr. Love on Thursday is my recollection, to know if he would be at home Saturday afternoon; he wired back that he would be at home.

Q. You told at home that you were going to New York and from there to Europe? A. I don't know that I did.

Q. Didn't you tell me when I met you at the hotel last Monday that you were going East and from there to Europe? You have been here ever since? A. Yes, sir.

Q. Been consulting with counsel for defendant? A. They have asked me questions.

Q. Haven't you been to their office? A. Yes, sir.

Q. Been there with Mr. Love? A. Yes, sir.

Q. Consulting about this case? A. I have been there in their office.

Q. Purely voluntarily? A. It was at the request of Mr. Love.

Q. You need not have gone? A. There was no law compelling me to go.

Q. Have you ever been subpœnaed here? A. No, sir.

Q. Have you been staying here day after day since last Monday waiting to testify in this case? A. I did that because I had promised to do so. It was not through any malice, but simply because Mr. Love requested me to stay over here. His counsel asked

111 me what I knew in regard to this case and in regard to that letter and they requested that I stay here and if they wanted to put me on the stand I told them I would be glad to stay if I could serve them in any way whatever.

Q. Do you know about W. L. Wells Co. business; have you ever been in their office? A. I stated that Mr. Wells was the man that transacted the business of W. L. Wells Co. All I know is that Mr. Wells bought the cotton and that he had general charge of the business in Vicksburg.

Q. What do you mean by general charge? A. He bought the cotton on the market; that is the principal thing a cotton buyer has to do in Vicksburg.

Q. That is all you know? A. Yes, sir.

Q. You don't know anything about the contracts or business of the concern other than that? A. That is about all that I could possibly know.

Q. Mr. Wells is reputed to be one of the best judges of cotton in the country? A. I think he is good.

Q. Is it an unusual thing for a man in a firm who is a first class judge of cotton to buy the cotton for the firm? A. No, sir, it is usually the case.

Re-Direct Examination.

Q. Did you know anything about the litigation before you came to Gastonia? A. No, sir, the only thing I knew was a notice of a telegram dated Charlotte, N. C., to the New Orleans Picayune.

Q. When did you know that? A. This paper reached Vicksburg Wednesday or Thursday afternoon and the next morning after this paper was received in Vicksburg and I telegraphed Mr. Love if he would be in Gastonia on Saturday afternoon, and my reason for doing so was that at the time I had seen Mr. Love he told me at that time that his arrangement was made with Mr. Wells and it was entirely satisfactory and he didn't care to make any change, but that if he ever did make any change he would be glad to see us.

Q. Did you come here to see anything about the law case?

A. I had no idea of being mixed up with a law suit until after I arrived at Gastonia.

Defendant Closes.

When the evidence was offered by the plaintiff in error as to transactions between W. L. Wells and John F. Love, representing the plaintiff in error, tending to prove the agreement on the part of W. L. Wells that a part of the purchase money due by the plaintiff

112 in error for the cotton, should be turned over to the corporation known as the Loray Mills, in payment of the subscription to the stock of the said mills, which it was claimed that W. L. Wells had made, counsel for the defendant in error objected to all such testimony, and His Honor stated that he would admit the same subject to the requirement that it should thereafter be shown in the course of the trial that the said W. L. Wells had authority from the defendant in error to make the said agreement, or that the same had been ratified by the defendant in error.

At the close of the testimony offered by the plaintiff in error, counsel for the defendant in error thereupon stated that before introducing testimony in reply, they would move the court that all the evidence which had been offered as to the transactions between W. L. Wells and John F. Love, in regard to the agreement that part of the purchase money of the cotton should be applied to the payment of the alleged subscription made by W. L. Wells to the stock of the Loray Mills, be stricken out, for that the evidence of the plaintiff in error had closed, and plaintiff in error had failed to show any authority on the part of W. L. Wells to agree that any part of the purchase money due for the cotton should be applied to the payment of his subscription to stock in the Loray Mills, or had failed to show any ratification of the same by the defendant in error.

His Honor thereupon stated that he would instruct the jury that the plaintiff in error had failed to offer any evidence from which the jury would be warranted in finding that W. L. Wells had authority to bind the W. L. Wells Company by any agreement to apply any part of the purchase money to the payment of his stock, and had failed to offer any evidence from which the jury would be warranted in finding that the W. L. Wells Company had ratified any such act, and that upon the pleadings and the evidence in the case he would instruct the jury to find the issue in favor of the defendant in error and render a verdict for the amount claimed in the complaint.

CERTIFICATE OF INCORPORATION OF "THE LORAY MILLS" BY CYRUS THOMPSON, SECRETARY OF STATE.

STATE OF NORTH CAROLINA,
Department of State.

To all to whom these presents shall come—Greeting:

Know ye, that it appears from the certificate of the clerk of the Superior Court of Gaston County, that the following named persons:

113 Jno. F. Love, Geo. A. Gray, Frost Torrence, J. M. Sloan and W. T. Rankin, heretofore on the 16th day of February, 1900, signed and filed articles of agreement for the formation of a private corporation before said clerk, and copy of said articles of agreement, duly certified by said clerk under the seal of said court, have been filed and recorded in this office, as prescribed in chapter 318 of the acts of 1893.

Now, therefore, under the power and authority vested in me by said chapter 318 of said acts of 1893, I do hereby declare the persons signing said articles of agreement duly incorporated under the name and style of "The Loray Mills," for the period of thirty years from and after the 19th day of February, 1900, for the purposes set forth in said articles of agreement, with all the powers, rights and liabilities conferred and imposed by law on such corporations.

Witness my hand and the great seal of the State of North Carolina, at office in the city of Raleigh, this the 19th day of February, in the 124th year of our independence, and in the year of our Lord one thousand nine hundred.

CYRUS THOMPSON,
Secretary of State.

[THE GREAT SEAL OF THE STATE OF NORTH CAROLINA.]

NORTH CAROLINA, }
Gaston County. }

I, C. C. Cornwell, clerk of the Superior Court of Gaston county, certify that the foregoing and attached is a true and accurate copy of the articles of agreement and letters patent of the Loray Mills as they appear upon record and on file in this office.

Witness my hand and official seal this, the 28th day of June, 1901.

C. C. CORNWELL,
Clerk Superior Court, Gaston County.

(Seal of the Superior Court of Gaston Co.)

114 **LETTER NOV. 8, 1899.**

Vicksburg, Miss., November 8th, 1899.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:

From your various letters of recent date we get the idea that you are inclined to buy your cotton this and next month. In this we have come to the conclusion that your decision is a wise one.

From the best information we can gather about the crop, it is undoubtedly very much short of the past two, and everything looks to us like higher prices are bound to obtain later on. In short, we believe that the earlier you buy your cotton the cheaper you will get it, and we are inclined to go right in and buy it. What say you? To do this, of course, we will have to look to you for some considerable help in the way of ready money, and while East, wouldn't it be a good idea to arrange for this?

The banks in this section are unusually heavily loaded owing to the very rapid gathering of the cotton crop, and they are all loaded to the guards with interior cotton buyers, and are not disposed to make any time loans. Of course, as far as our capacity goes, count on that, but it is a matter only of fifty to sixty thousand dollars, which at present prices of cotton won't go very far towards getting your supplies.

Yours very truly,
W. L. WELLS CO.

TELEGRAM NOV. 10, 1899.

W. L. W.

Gastonia, N. C., Nov. 10, '99.

W. L. Wells Co.,
Vicksburg, Miss.

Letter received; buy cotton quick as possible; write occasionally.

JOHN F. LOVE, Treas.

115 **LETTER NOV. 10, 1899.**

Gastonia, N. C., November 10th, 1899.

The W. L. Wells Co.,
Vicksburg, Miss.

Gentlemen:

Your long looked for letters to hand this morning, and in reply we immediately wired you to buy cotton, and let us hear from you occasionally, and send you the confirmation of the same.

It has been our opinion for some days that we would see better prices; our goods are steadily advancing and the demand is enormous.

Buy our cotton as soon as possible, and we will make arrangements about money, and think we can get all we want at any time. Buy cotton, and send us invoices and letters telling us what you are doing and expect to do, and we will make our arrangements accordingly.

We remain, in haste, awaiting your further favors.

Yours very truly,
JOHN F. LOVE, Treasurer.

LETTER NOV. 13, 1899.

Vicksburg, Miss., November 13th, 1899.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Sir:

We have yours of the 10th. It looks to-day like our delay in buying your cotton has been your good fortune. At all events it would appear that you have lost nothing, and likely otherwise. However, we don't think it a good idea to bet on the market going down much, nor at the same time would we advise rushing and buying too fast, but rather a happy medium between the two extremes.

Now, don't let us annoy you about money matters, but you don't seem to get quite the idea we wish to convey. It is this: Up to date we have shipped you in round figures $65,000.00 of cotton, which is about out capacity, without borrowing from our banks, and this we don't care to do for reasons given in our last. Now, what we want you to do is to arrange for money so we will not have to carry you for exceeding, say, sixty to seventy thousand dollars.

116 If you are to buy all your cotton in the next thirty to sixty days, it means an outlay of some $350,000.00, or say, practically $300,000 more than we are able to carry you for, hence we must ask that you either arrange to remit us as we buy, or let us draw at sight. We want to be very explicit about these matters, as it never hurts anybody to have a perfect understanding, but to the contrary, in our opinion, it is the only right way to do business.

Yours very truly,

W. L. WELLS CO.

(W. L. W.)

LETTER NOV. 15, 1900.

Gastonia, N. C., November 15th, 1900.

W. L. Wells, Esq.,
Vicksburg, Miss.

Dear Sir:

For fear that you will lose your good opinion of us and get in a snap, we send you some money to-day, and trust it will run you for a few days, and we will try and send you some more next week. We have made no arrangements for any money yet as we were expecting you to get it until your recent letter, and we have placed our *twon* bonds and we hope to have that money very soon, $65,000.00, on deposit for some time, and our sheriff has delayed in his collections, and instead of having a good deposit to his credit is overdrawn several thousand dollars to-day, which will be in in a few weeks, and between these two parties we may not have to borrow but a small amount for some time. From your letter last night we fear that you are not buying any cotton for us for fear that we won't send you any money, and we will say that we have several friends wanting to lend us money, and we don't anticipate any trouble to get whatever money we may need for legitimate purposes at all times.

You may hold up the Ozark *ctton* some, as we see now that we will not be able to get our machinery before the first of next year, and will not be running before the 1st of February *on* March, 1900. Push in some more for Avon as soon as possible, and also Gastonia, and we hope you will profit by the recent declines.

We accepted some handsome orders this morning, and hope to be all right for next year.

In haste.

Yours very truly,

JOHN F. LOVE.

117 **LETTER DECEMBER 21, 1899.**

Vicksburg, Miss., Dec. 21st, 1899.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Sir:

We enclose herewith invoices of 314 bales, various marks. This is one crop of cotton we bought in the country, and you will find the 221 bales OPI-E magnificent full 1⅛ to 3-16. The 34 bales OVE-A and IVE-S are nice grades, but not quite so full in staple, while the 39 bales UNI-T, BET-A and RIN-D are rather "ratty" all round, though we got them off in price to make up for a good deal. You understand that in buying a crop from a country planter, there is no way of getting part of it—it is all or nothing, and the bulk of this was too good to miss on account of a little tag end which you can work in to advantage. We thought best to separate in marks, so you would know better how to use it in mixing.

There are several nice crops offering which could be had cheap, but our hands are tied until you send us some money, which we hope will come along by the first, at latest.

Yours very truly,
W. L. WELLS CO.

W. L. W.

LETTER DEC. 22, 1899.

Gastonia, N. C., December 22nd, 1899.

W. L. Wells, Esq.,
Vicksburg, Miss.

Dear Sir:

I was never put in such an awkward position in my life, and never have I been so diabolically disappointed.

I am ashamed of myself, and have treated you badly indeed, and am determined to right my wrongs in some way, and that soon. In the early part of the season I was offered all the money I wanted at 4½ per cent., and as we had a lot of money to be coming in, I would not take it. Cotton went up, money got tight, and I have never seen such a demand for money in this section, and our ex-

118 pected money has not arrived. I wrote you last week, and I thought I had the matter adjusted, but here I am disappointed, and am disappointing you. I took our bonds, $65,000.00, to Winston on Wednesday of this week to deliver them and get the money, and to be disappointed again. Parties wanted the bonds and are ready to take them, but the printer has made a mistake in getting them up, and now we must have them reprinted, and it will mean another week to do that. I am pushing them all it is possible, and will make the delivery as soon as possible.

I enclose you a clipping from our paper from the sheriff, and you can see how he is getting on. All our banks are loaded to the brim and are not loaning anything, and we have been expecting better things and have bought some 800 bales cotton here and put it in the warehouse. Now you can see our position and our disappointment, and if you can get your bank to carry you for another week or two, we will commence and pay you off prompt, and pay you the extra interest if any is incurred.

We are very much worried over this matter, and very sorry that we have disappointed you.

We remain, Yours truly,
JOHN F. LOVE, Treas.

TELEGRAM JAN'Y 7, 1900.

Jany. 7, 1900.

John F. Love, Treas.,
Gastonia, N. C.

Prudish Prurient last week.

W. L. WELLS CO.

Translation: "When can we expect a remittance? We are disappointed in not receiving a remittance last week."

TELEGRAM JAN'Y 10, 1900.

Jany. 10th, 1900.

John F. Love, Treas,
Gastonia, N. C.

Rivalry Civility Rive to-morrow Sinews for us to know exactly what we can depend upon. Rose.

W. L. WELLS CO.

Translation: "Have received no reply to our telegram of 7th inst.

119 Pleast give it attention. Reply by wires so that the message will reach us to-morrow. It is important for us to know exactly what we can depend upon. Particulars by mail."

LETTER JAN'Y 10, 1900.

Vicksburg, Miss., Jany. 10th, 1900.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Mr. Love:

We wired you Sunday night asking when we could expect a remittance, and not hearing from you, we wire you again to-night, and hope to have your reply to-morrow. Based on your letter 22nd December, the writer assured our bank that you would be sure to remit by the 10th at latest, and acting on this we have gone ahead and bought some nice lots for you, which we have to pay for, and you can readily understand how embarrassing it is to us, and how very disappointing to the bank.

We hope nothing has occurred to delay matters again, and

Yours truly,

W. L. WELLS.

LETTER JAN'Y 16, 1900.

Vicksburg, Miss., Jan'y. 16th, 1900.

Mr. John F. Love, Treasurer,
Gastonia, N. C.

Dear Sir:

Uncle Sam's bank examiner has been due for some time, and we have been holding some bills of lading in order that our account would not show up so unfavorably, but this has been gone through with, and we have passed muster. We now herewith enclose bills of lading for:

241 bales OPI-E	6 bales RIN-D
4 bales BET-A	21 bales OVE-R
13 bales IVE-S	29 bales UNI-T
25 bales TOP	77 bales ROL-E
100 bales ONY-X	55 bales UNO-L
	161 bales SOU-P

All for account of Avon.

120 50 bales CAP-E 100 bales NAT-I
107 bales JAC-K

Account of the Gastonia Cotton Mfg. Co.

We bought the following lots in the country, and had to take gin weights, which were guaranteed. On arrival please have carefully re-weighed and give us the numbers (?), as the party from whom we bought claims he has made a mistake in rendering the weights which we invoiced to you:

241	OPI-E	13	IVE-S
21	OVE-R	29	UNI-T

Your prompt attention to this matter will greatly oblige.

Yours very truly,

W. L. WELLS CO.

W. L. W.

LETTER JAN'Y 17, 1900.

Vicksburg, Miss., Jan'y 17th, 1900.

Mr. John F. Love,
Gastonia, N. C.

Dear Sir:

Some time since we asked you to hold up on the Ozark cotton for a while, since which we have not heard from you on this matter.

Such cotton as you need for the Ozark is becoming very scarce, and while there is a small accumulation on the market, when this is gone it will be practically exhausted.

We thought best to advise you about this, that you may act accordingly, and as you think best.

Yours very truly,

W. L. WELLS CO.

121 **COPY OF LETTER PAGE 669, BOOK, NO. 3.**

Vicksburg, Miss., Feb'y 12th, 1900.

Mr. John F. Love,
Gastonia. N. C.

Dear Sir:

Yours of the 7th received, and, supplementing the firm's answer, I beg to say that we are going to have considerable trouble to get the cotton you want for the Ozark Mills. The full style inch cotton, such as we have been shipping to Gastonia, is very scarce, and every lot of the kind put out is snapped up by exporters, who at last have realized the shortness of the crop and are genuinely alarmed. Such cotton will cost anywhere from 9¼ to 9½ cents, and I expect I will have to go to New Orleans to buy it, though there is a little lot here of about 400 bales, which I think I can buy for 9½, possibly 9¼ landed. There is also a lot of 200 bales very, very handsome, strict good middling to middling fair, beautiful, smooth, well handled, 1¼, which I think can be bought for 11¾ landed, and if these prices don't give you heart failure, please wire me promptly on receipt of this if you think it advisable to buy them, and I will do what I can towards it. If possible, will shade the prices, but if the market keeps strong as it is to-day, there is little hope of this. These prices contemplate prompt payment, say not exceeding 15 days, and, if possible, we would like to have the authority to draw with bills of lading attached. We shall expect to hear from you by wire promptly Wednesday morning. Also let us know if you want us to buy any more cotton for Gastonia and Avon mills.

Yours very truly,
W. L. WELLS.

LETTER APRIL 13, 1900.

Vicksburg, Miss., April 13th, 1900.

Mr. John F. Love,
Gastonia, N. C.

My Dear Sir:

I have yours of the 26th ult., and have been talking with my friend about investing in the Loray, but thus far without any very definite conclusion. He has about half-way promised to run over

122 there and look things over, and we have set 10th May to come. At all events, I will be over there at that time, and will then decide what I will do about the amount of stock I will take.

As to buying your cotton, I see no reason why I can't do this, whether I come or not; in fact, it looks to me that I could serve *all* your interest better by remaining here. You don't need a local cotton buyer, but one to buy the cotton you have to buy away from home. However, these matters can be talked over when I come on.

With kind regards to your family and Mr. Gray, I am,

Yours truly,

W. L. WELLS.

LETTER MAY 18, 1900.

Vicksburg, Miss., May 18th, 1900.

Mr. John F. Love,
Gastonia.

Dear Mr. Love:

I did not reach home until yesterday evening, and found my wife quite ill, but she is better this morning. Have not had an opportunity to talk with my friend yet, but will some time soon.

Regarding the balance due us on last season's purchases I had rather not mix that up with anything else, and would thank you to remit to cover this as soon as possible, as it would facilitate me very much.

Please give this your prompt attention, and oblige,

Yours truly,

W. L. WELLS.

LETTER JUNE 4, 1900.

Vicksburg, Miss., June 4th, 1900.

Mr. John F. Love,
Gastonia, N. C.

Dear Sir:

Since yours of the 23rd ultimo to the writer we have heard nothing from you, and are very much disappointed at not receiving the remittance according to promise. You certainly do not appreciate

123 our position in this matter. Do you know that since your letters and telegrams to us of about the 10th of November last, saying for us to "go ahead and buy your cotton, and that you would arrange for the money to pay for it," that we have invoiced all your cotton on a cash basis, and can show by our books that prices charged you were ⅛ to ¼c. less than your neighbors paid us for the same cotton at the same time with sight draft?—bill of lading attached. Furthermore, every dollar we have carried you for has cost us 8 per cent. interest from the day we bought the cotton, whereas we have only charged you six per cent. Pardon us for a little display of impatience, as you must know that it is not without cause. We know your intentions are good, but you know what is said of "good intentions."

May we ask that you remit us in full covering invoices and interest to date by return mail, and greatly oblige,

Yours very truly,

W. L. WELLS CO.

W. L. W.

LETTER JUNE 19, 1900.

Gastonia, N. C., June 19th, 1900.

W. L. Wells, Esq.,
Vicksburg, Miss.

My Dear Sir:

We enclose you our check for $10,000.00 on account, and we trust it will keep you out of the poor house, and that you have enough bread to last a few weeks yet. It is mighty scarce up here (I mean money). I will try and send you some more money soon, if I am not too short. I don't want to have to borrow any.

How about you and your friends in the Loray? We shall be glad to hear from you in regard to it, and don't want you to disappoint us.

We beg to remain, with best wishes, and all well,

Yours very truly,

JOHN F. LOVE.

124 **LETTER APRIL 21, 1900.**

April 21, 1900.

Mr. John F. Love,
Gastonia, N. C.

Dear Sir :

We have been approached by the manager of the Textile Excelsior for an advertisement in their special ediction, issued during the Cotton Spinners' Convention here on the 10th of May, copies of which shall be sent not only to their subscribers, but every cotton mill in the country and to many Northern bankers. Thinking it might be a favorable opportunity for me to advertise our stocks all through the country, we have prepared the enclosed advertisement and sent it to you before we give it to the paper, in order to have you pass judgment on the reference to the Loray stock. This is, of course, advertised in an indefinite way, and the facts in the case will only be given to those who make special inquiry. If there are any suggestions you would like to make, we would be glad to accept your judgment in the matter.

Will you return copy with your opinion Monday morning, if possible?

Very truly yours,
ABBOTT & STEPHENS.

Per W. C. W.

ADVERTISEMENT.

SOUTHERN MILL STOCKS

IN MANY CASES HAVE MADE THEIR OWNERS

INDEPENDENTLY RICH.

We are handling these stocks on commission, and shall be pleased to correspond with any one desiring either to buy or sell.

The best investment now on our list is

$100,000

stock in one of the finest, most modern mills in the South, which will be in operation in a few months, and the managers of which

125 have made a very high record in their other mills. We venture the prophesy that this stock will be worth two hundred in a very few years from the beginning of operation.

CAPITAL STOCK IS ONE MILLION DOLLARS, ALL OF WHICH IS TAKEN EXCEPT THE AMOUNT OFFERED BY US.

If interested in this or any other form of Southern investments, we shall be pleased to correspond with you.

ABBOTTS & STEPHENS,
Charlotte, N. C.

References:
Charlotte National Bank,
Commercial National Bank.

(Copy.)

TELEGRAM, SEPT. 12, 1900.

Gastonia, N. C., Sept. 12th, '00

The W. L. Wells Co.,
Vicksburg.

We are anxious to see Mr. Wells as soon as possible and arrange our business matters. When will he be here? Answer.

JOHN F. LOVE, Treas.

10:51 A. M.

LETTER OCT. 1, 1900.

Gastonia, N. C., October 1st, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

Dear Sir:

We inclose confirmation of telegram sent you to-day, and want you to ship us 50 bales weekly of the inch cotton to the Gastonia Cotton Mfg. Co., and give us the lowest price possible.

We would like to hear from you as soon as convenient how things

126 are getting along, condition of the market in your territory, etc. We were somewhat disappointed in that we expected to hear from you last week, and we trust you will not keep us waiting very much longer.

I hope you reached home safely and in good shape.

Yours very truly,

JOHN F. LOVE, Treas.

LETTER OCT. 5, 1900.

Vicksburg, Miss., Oct. 5th, 1900.

John F. Love, Esq.,
Gastonia, N. C.

Dear Sir:

I got home safe and sound Monday after leaving your place. I find things very much demoralized here, everybody expecting cotton to go to the sky, and acting as though every bale was the last chance to get one. As best I can take in the situation it looks to me like a wild speculation on the part of the buyers, and if so, there is coming a day of reckoning.

There is very little cotton being shipped and stocks are accumulating, but everything offered is bought up by the speculators, which takes it off the market for the time. Later on, I predict that they will experience that "tired feeling," and there will be some reasonable parity between futures and spots. I have not changed my opinion about buying; I think it will be later on, and for the time my idea is to await except just for immediate wants.

I notice you want 50 bales weekly for the Gastonia Mfg. Co., which shall have our best attention. Just now it is impossible to get it under 11c., and hard to do at this, but I hope it may get down some by next week.

By the way, when there we failed to talk anything about how you wanted to pay for this season's purchases. Some time last spring you wrote that you were going to arrange with the National Security & Guarantee Co. of New York for your cotton this season. Please let us know about this and oblige. We did not draw for the fifty bales yesterday, and will wait till we hear from you before doing anything.

Yours truly,

W. L. WELLS.

127 **LETTER OCT. 9, 1900.**

Gastonia, N. C., October 9th, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

Dear Sir:

Your favor of the 5th received and contents noted with interest. We would like to hear from you frequently about the market and cotton, and how it is going. We would also like to have your ideas often about buying cotton.

Just now we want you to ship us to the Gastonia Cotton Mfg. Co., just 50 bales of good inch cotton, also commence next week and ship 50 bales weekly to the Avon Mills until further notice.

As to payments on cotton we wish to remit you promptly for our immediate wants, and we are making arrangements with the National Surety Co. to get the money when we commence storing cotton.

Again, we would say that we are anxious to hear from you often, and we trust that cotton will go some lower.

Yours very truly,

JOHN F. LOVE, Treas.

LETTER OCT. 20, 1900.

Vicksburg, Miss., Oct. 20, 1900.

Mr. John F. Love, Treasurer,
Gastonia Cotton Mfg. Co.,
Gastonia, N. C.

Dear Sir:

Enclosed please find invoice and bill lading covering fifty bales cotton marked HOB-E, amounting to $2,660.77, which we wish safely to hand and satisfactory.

We are billing you this cotton at the same price we are to others on whom we draw with B-L attached, and we will thank you to remit us promptly, else we will make an actual loss on it.

Yours very truly,

W. L. WELLS CO.

J. T. W. Enc.

128 **LETTER OF OCT. 22, 1900.**

Gastonia, N. C., Oct. 22nd, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

Dear Sir:

Yours of the 20th received and contents noted with interest. We are very much obliged for your letter, and our views coincide exactly with yours in regard to the time for us to buy cotton, and at the same time when you think the market is right please go in and secure our cotton for storing for next year at the best prices you can possibly buy it for; we have already made arrangements with the National Surety Co. to get all the money we want on this cotton.

We have wired you to-day to forward us at once fifty bales for the Avon Mill, as we are nearly out.

In addition to the cotton, which you will soon commence to buy for storing, we want you to ship along fifty bales weekly to each of the mills, Ozark, Avon and Gastonia, for immediate consumption.

We will leave the matter with you now, and trust you will be able to get us in some nice lots at good prices.

Yours very truly,

JOHN F. LOVE, Treas.

LETTER OF OCTOBER 20, 1900.

Vicksburg, Miss., Oct. 20th, 1900.

John F. Love, Esq.,
Gastonia, N. C.

My Dear Mr. Love:

Cotton has had a slump that I anticipated, and if you remember prophesied when I was there. This has been what I expected, and many people who were big bulls with cotton a cent to 1¼c. higher, are now as rampant bears.

Receipts are going to be pretty heavy for the next sixty days, and prices may feel the weight of cotton, especially until after the election, but I see no good reason for much further decline.

129 At present prices I suppose there is some margin of profit to the manufacturers, and as all of the mills, both in this country and Europe, are bare of stocks, it seems to me that with the buying fever once on, prices may work higher rather than lower, and while I can't unreservedly encourage laying in a stock of cotton, it seems to me that it would be the part of wisdom to take on some at present prices. Thus far it has been very hard work to get the factors down on a basis of the decline, but I think by another week they will become reconciled and accept the market prices. Some how or other I can't help but feel that November and December are going to be favorabl- times to buy cotton.

Yours very truly,

W. L. WELLS.

TELEGRAM OCT. 25, 1900.

Oct. 25th, 1900.

John F. Love, Treasurer,
Gastonia, N. C.

Think obviousness crop about Bluish nice lot for Avon Amenities landed. This is relatively cheap. What do you think of it? Ritual.

W. L. WELLS CO.

Translation: Think we can buy crop about 150 (bales) nice lot for Avon, 11c., landed. This is relatively cheap. What do you think of it? Answer early to-morrow.

LETTER OCT. 26, 1900.

Gastonia, N. C., Oct. 26th, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

Dear Sir:

We have your telegram of the 25th in regard to buying 150 bales for the Avon at 11c., and we have wired you to buy it. We herewith enclose confirmation of same.

We think it the part of wisdom to get hold *off* some now, and if it goes lower we will take on some more, and thus reduce our average.

130 We appreciate your wiring us in regard to this lot, and will be pleased to hear from you often.

Yours very truly,

JOHN F. LOVE, Treas.

LETTER OCT. 31, 1900.

Vicksburg, Miss., Oct. 31st, 1900.

Mr. John F. Love,
Gastonia, N. C.

Dear Mr. Love:

We are shipping to-day the crop of 150 bales, and will ship the other crop to-morrow. I suppose you will want us to carry this cotton until it arrives, when you will reimburse us through your arrangement with the National Surety Co. Please let us know definitely about this, that we may know just what to say to our bank about it.

We have had this cotton loaded in Southern R. R. cars and it should go through promptly and in solid car lots, and not broken up as it was last season.

Yours very truly,

W. L. WELLS.

J. T. W

LETTER NOV. 3, 1900.

Gastonia, N. C., November 3rd, 1900.

W. L. Wells, Esq.,
Vicksburg, Miss.

My Dear Mr. Wells:

Yours of the 31st ult. We are arranging with the National Surety Company to get all the money you want, and as you suggest you can arrange with your bank accordingly.

We trust the railroads will push our cotton through as fast as possible. It has been very slow this season coming in.

Mills are running well and cotton is fine. No complaints, and we want you to keep sending the same cottons.

The election will soon be over, and we are looking for a Mc-

131 Kinley landslide and election, if so, much better times and easy money matters. Putting roof on Loray and otherwise doing well.

I beg to remain, Yours truly

JOHN F. LOVE.

Glad to see good weights.

TELEGRAM NOV. 12, 1900.

Nov. 12, 1900.

John F. Love, Treas.,
Gastonia, N. C.

We see chance to buy four to five hundred bales good grade inch to inch sixteenth ten three-eights landed. What do you think about buying? Answer.

W. L. WELLS CO.

TELEGRAM NOV. 12, 1900.

Gastonia, N. C., Nov. 12, '00.

W. L. Wells Co.,
Vicksburg.

Buy four to five hundred bale lot, price named.

JOHN F. LOVE, Treas.

LETTER NOV. 13, 1900.

Vicksburg, Miss., Nov. 13th, 1900.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:

We have your telegram of yesterday saying "Buy the four to five hundred bales at prices named," and we beg to report having bought same, but can't say just how many bales we will be able to get. We hope, however, to get the full amount. We bought this lot from one of "God's chosen people," and you know you can't count on them on an advancing market. In fact, he did everything to back out of the trade, but we put the screws to him so tight he couldn't fly the track altogether.

132 While he is chafing under the trade, we think eventually we will get out with about what is due us. On cotton for the Avon it now looks that 11½ cents is about as cheap as you can expect it. In fact, the two lots of 150 and 100 bought at 11c. a little while back seems to have been rather a fluke purchase, as we have never been able to duplicate it, and, as we stated at the time, we were offered a handsome profit on these lots before we took them up; so you can count yourself just that much ahead on those lots. There seems to be a general demand just now, as we predicted that we would not be surprised to see, and a scramble, and if so, higher prices. These prices look awfully high to us, but we don't see any good reason for lower prices. Naturally we feel timid to go ahead, and would be pleased to have your views from time to time.

Hope you have perfected your arrangements with the National Co., and will be able to remit us promptly as the cotton is received, as it runs into money at a terrible rate, and it does not take long to get in very bad shape with our bank.

Yours very truly,

W. L. WELLS CO.

W. L. W.

LETTER NOV. 17, 1900.

Gastonia, N. C., Nov. 17th, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

Dear Sir:

We have your favor of the 13th, and in reply would say that we think your purchase of 400 to 500 bales for the Gastonia Mill is all right. We hope you will look out for us and pick up some more good lots.

In regard to the Avon, as goods have not advanced, we dislike to pay 11½c., but if that is the best you can do we will have to take the medicine. Our goods have not advanced, and are lower now than when we took our last contracts; but as we waive orders to run until the first of the year, we are now making efforts to sell any just now.

As to Ozark cotton, Mr. Rankin says he wishes you to look out for him and pick up some good lots, if you can, and let him hear from you.

133 On money matters, we have perfected our arrangements, and were looking for a check to-day, but it has failed to come, and we expect it now the first of the week, when we will make you a good remittance.

Yours very truly,

JOHN F. LOVE, Treas.

LETTER NOV. 19, 1900.

Gastonia, N. C., Nov. 19, 1900.

W. L. Wells, Esq.,
Vicksburg, Miss.

My Dear Mr. Wells:

I enclose you check for $25,000.00 on account. I trust you will pick up some more bargains, and do the best you can for us, and oblige.

Loray and all the mills doing very well.

Getting on very well, and remain,

Yours,

JOHN F. LOVE.

LETTER NOV. 21, 1900.

Vicksburg, Miss., Nov. 21st, 1900.

John F. Love, Esq.,
Gastonia.

Dear Mr. Love:

Yours of the 19th enclosing N. Y. check for $25,000.00 received, for which accept thanks.

We have about brought our Jew friend around, and there seems now no doubt about our getting the 400 bales. Have secured a beautiful lot for Avon in Greenwood, which will be shipped in a few days. Also a lot of 200 bales from a point in Arkansas for Avon, which we presume we will get. We bought this lot on same basis as the 250 bales 11c., but the big rise in the market makes us uncertain about it until we have got it. You know you can't risk all cotton buyers. The Greenwood lot is 118 bales and cost 11¼ landed,

134 but it is very fine staple. We are working like beavers for you, and think we have done you good service the past ten days. Look out for a jump in the market, and my advice would be not to sell any goods right now. I believe the market will go a cent higher.

Please reimburse us as fast as possible, as cotton runs into money at an alarming rate, and to be heavily overdrawn naturally makes us timid about buying.

Yours,

W. L. WELLS.

LETTER DEC. 18, 1900.

Vicksburg, Miss., Dec. 18th, 1900.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:

Referring to enclosures. This hundred bales has considerable in it suitable for Avon, but the shippers marked the two lots before we had an opportunity of separating, hence you will have to look out for this on arrival; or, if you prefer, and will send us redrawn samples with your tag numbers in each, we will separate and give the lots of each. The poorest of this lot you will find extra fine for Gastonia Mills, and we suggest that you work it in by itself, or on some particular work, where you want extra strength. We presume our recent shipments are in, and if so, please remit as soon as possible, as we stand very much in need of same.

The lot we wired you about the other day, as yet we have been unable to buy, owing to death in the family of the party who has it in charge. There is also some disinclination on the part of the owner to accept our bid, unless we will agree to take in some forty or fifty bales of the same crop which will not go better than strict low middling to middling in grade. If you think it advisable to take this lower end in, you might wire us on receipt of this. It is a nice crop of cotton, and we hate to see it go by.

Yours very truly,

W. L. WELLS CO.

W. L. W.

135 **LETTER DEC. 20, 1900.**

Vicksburg, Miss., Dec. 20th, 1900.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:

We have yours of the 18th inst., and regret very much to hear that the 200 bales PAR-K and NOT-A are not working well. This was a case of trying to save you some money by buying outside cotton. These two lots came from Arkansas, and as it was from a section where we had two years ago bought you some good cotton, and it was offered to us cheap, we were tempted to buy, hoping to serve your best interest; but it has turned out otherwise, and we shall confine ourselves to this territory hereafter.

We have your telegram saying to buy the crop of cotton if the staple is all right, and regret to report that we are unable to buy it, as the owner has decided not to sell until after the holidays. We think the real reason was that he did not want to take the price, thinking that cotton would in the mean time advance.

It is likely to be very dull for the next two or three weeks, and we think we will be able to buy some as good or better cotton at this price, unless the market improves more than we see any reason for its doing. There is considerable cotton on the market of rather dull color, but not leafy, middling to strict middling, very full, strong, silky, 1⅛ to full 1 3-16, which we can probably buy as cheap as strict middling and good middling 1⅛, such as we have been buying for Avon, and it strikes us that this kind of cotton would probably do your work better. It is about such staple as Abernethy and the Clover people use, except not quite so good in grade.

We have just learned that documents for 129 bales BAL-D and 210 ROC-K have been sent you by error, and we are telegraphing you to return them. These lots are for the Clover people. Perhaps it will make you feel good to compare your prices with theirs, for almost the identical cotton; and just here we are reminded that if the market stiffens up much we will not be able to buy full quality for Avon under 11¾c. to 12c., and we would like to know what you think about this.

Yours very truly,

W. L. WELLS CO.

W. L. W.

136 **LETTER DEC. 22, 1900.**

Gastonia, N. C., Dec. 22nd, 1900.

Mr. W. L. Wells,
Vicksburg, Miss.

My Dear Sir:

Your favor of the 20th received, and we *not* what you have to say in regard to the 200 bales PAR-K and NOT-A for the Avon, and we know that in taking these lots you hoped to serve our best interests, but as it has turned out otherwise you will confine yourself to Vicksburg territory. This, we believe, will be the best policy, even if we have to pay the price, as we have had no end of trouble with the Arkansas cotton in the mill, work running so unsatisfactory and production reduced so much that the mill has really lost money in using this lot. We are now trying to get rid of it by mixing it in a small proportion with the Vicksburg cotton, and we feel like it takes such an indefinite time to get it all out of the way; but we hope to work it through so that our yarn and cloth people will not give us any trouble about it.

In regard to the cotton that is being offered of a dull color, not very leafy, middling to strict middling, but of a full, strong staple, this color will not make any difference to us, and if it has the strength and the length, that is what we want, and we believe it will suit our work all right.

We are not inclined to take a bullish view of things now, and for this reason believe it best to be rather quiet and pick up suitable lots that you may find at conservative prices—that is, something that will suit us at the best prices possible.

Yours very truly,
JOHN F. LOVE, Treas.

LETTER DEC. 22, 1900.

Vicksburg, Miss., Dec. 22nd, 1900.

Mr. John F. Love,
Gastonia, N. C.

Dear Mr. Love:

Much obliged to you for copy of Craig's telegram to Mr. Gray. From the prices he asks it would appear he wants to get all of his

137 $10,00.00 stock back in the first transaction. I would be very glad to have the order now at 10¾c., and believe I could have bought it before the recent advance, or on the day he sent the telegram at 10½, and made a reasonable profit. It may be, and I think very likely it will, if this gentleman buys their cotton, not to be a great while before they decide they have gotten hold of a very expensive stockholder. This is, however, all grave-yard talk, and you must so consider it, as I make it a plan not to advise other people about their business.

I send you by express some "nuts to crack," which I hope you will find easier to crack than some of the business nuts we have had lately, for instance, what the yarn and cotton markets are going to do, and whether it will pay to build a million and one-half dollar mill to clothe the heathen Chinee, and when and how the Chinese question is going to be settled, etc.

Wishing you and yours a merry and happy Christmas, I am,

Yours very truly,

W. L. WELLS.

LETTER JAN. 2, 1901.

Vicksburg, Miss., Jan. 2nd, 1901.

Mr. John F. Love, Treas.,
Gastonia, N. C.,

Dear Sir:

We have yours of the 31st ult., and have credited your account with the 5c. per cwt. overcharge on the 50 bales MOH $13.03.

By the way, what about paying for some cotton? Certainly most, if not all, of our shipments since the middle of November have arrived, and we see no reason why we should not be paid according to the understanding. We don't call to mind an instance in our experience where we have worked harder to secure a lot of cotton than we did in these purchases for you, and, of course, we feel that we are entitled to as prompt a reimbursement as it is possible for you to make.

Yours very truly,

W. L. WELLS CO.

W. L. W.

138 **TELEGRAM JAN'Y 31, 1901.**

Jan. 31st, 1901.

John F. Love,
Gastonia, N. C.
When can we expect a remittance? Answer.
W. L. WELLS CO.

TELEGRAM FEB'Y 4, 1901.

Feby. 4th, 1901.

John F. Love,
Gastonia, N. C.
When do you expect to organize and elect officers for the Loray? Answer.
W. L. WELLS.

LETTER FEB'Y 5, 1901.

Gastonia, N. C., Feby. 5th, 1901.

Mr. W. L. Wells,
Vicksburg, Miss.
Dear Mr. Wells:

We wired you this morning in answer to your telegram of the 4th, that we hope to organize the Loray Mills and elect officers in a few weeks. We had expected to do this the first of the year, but on account of arranging some matters we thought best to postpone it a short while, and now think it best to organize within the next thirty or sixty days at the outside. I have spoken to a number of our stockholders about this plan, among them Messrs. Harry and G. M. Whitin, of Mass., and informed them that you were one of our stockholders, and would be vice-president. They were pleased to hear this and to express their good opinion of you; they think a great deal of Mr. Wells.

Our people are now putting the finishing touches to the buiiding and the cotton houses and overseer's houses will all be completed in a few weeks. The machinery is coming right along; part of the engine is her-, two cars of shafting have arrived, and looms are coming in daily, and some of the spinning and carding, several car loads, have been shipped this week. Our stokers and boilers have been in

139 position for some weeks, and are ready to fire up; the heating outfit has also been installed.

Yours very truly,
JOHN F. LOVE.

Deposited by
W. L. WELLS Co.
with
GASTONIA BANKING Co.,
Gastonia, N. C.

3-14-1900.

Specify the banks on which checks are drawn.

	Dollars.	Cents.
Specie		
Bills		
Checks		
Avon	$32,735	96

Deposited by
W. L. WELLS Co.
with
GASTONIA BANKING Co.,
Gastonia, N. C.

March 14th, 1900.

Specify the banks on which checks are drawn.

	Dollars.	Cents.
Specie		
Bills		
Checks	18,901	38
G. C. Mfg. Co		

140

Deposited by

LORAY MILLS

with

GASTONIA BANKING CO.,

Gastonia, N. C.

July 31st, 1900.

Specify banks on which checks are drawn.

	Dollars.	Cents.
Specie		
Bills		
Checks		
W. L. Wells	10,000	00

12-3-1900.

W. L. WELLS CO.

Deposited with

THE GASTONIA BANKING CO.,

Gastonia, N. C.

Specify the banks on which checks are drawn.

	Dollars.	Cents.
Specie		
Bills		
Checks		
Avon	17,788	85
Gastonia	22,899	23
	$40,688	08

141 12-3-1900.

LORAY MILLS

Deposited with

THE GASTONIA BANKING CO.,

Gastonia, N. C.

Specify the banks on which checks are drawn.

	Dollars.	Cents.
Specie		
Bills		
Checks		
W. L. Wells	40,000	

LETTER OCT. 7, 1899.

Gastonia, N. C., October 7th, 1899.

W. L. Wells, Esq.,
Vicksburg, Miss.

Dear Sir:

We thought maybe we might have heard from you this week, but suppose you have been too bust to write. How did you find matters on your return home, and how is cotton going? Have you bought any for our account as yet, and how soon do you think you will begin shipping us? I trust the break of yesterday will continue until we can buy some cotton and get the advantage of the decline.

Let us hear from you as often as you can get time to write, and keep us fully posted.

Our new mill is progressing nicely, and we trust to hear from you in regard to it soon, and see what your friend or friends will do for us. We will have the site surveyed on Monday and get the deed all fixed up.

Let us hear from you as soon as possible.

Yours very truly,

JOHN F. LOVE, Treas.

142 **LETTER OCT. 28, 1899.**

Gastonia, N. C., October 28th, 1899.

W. L. Wells, Esq.,
Vicksburg, Miss.,

My Dear Friend:

Since writing to you a week ago I have decided that it will be best for me to postpone my trip down to see you now, and make a trip to New York, and call to see you a little later on, as I wish to get some matters arranged before I come down to see you on my pleasure trip.

If you and your friends have decided about the mill stock we would be glad to hear from you as soon as possible, as I want to know your decision before I go East. Mill is taking nice shape, and we will go on with it and it seems no longer id doubt.

We trust you have bought some cotton for us again this week, and that it will soon be arriving and by the Southern Railway. We are in shape to take care of it and put it away.

Let us hear from you as soon as possible, and if you decide about the stock, if you remember we told you we would call the money 10 per cent. per month, commencing with January 1st, 1900.

We remain, Yours truly,

JOHN F. LOVE, Treas.

MINUTES OF FIRST MEETING OF STOCKHOLDERS LORAY MILLS.

Gastonia, N. C., July 8th, 1901.

Minutes of the first meeting of the stockholders of the Loray Mills, called pursuant to section 18 and 50 of the act of the Legislature of North Carolina (1901), entitled "An act to revise the corporation law of North Carolina," and held, after due notice, in the office of the Gastonia Banking Co., at the hour of 2:30 P. M., on the 8th day of July, 1901. (the Loray Mills not having any fixed office.)

On motion, W. T. Rankin was unanimously elected chairman of the meeting, and Frost Torrence was in like manner elected secretary.

On motion, Geo. A. Gray, W. A. Haffner and F. W. Bradley were appointed a committee to examine and report the number of shares

143 of stock in said company represented either in person or by proxy. Said committee reported 3,830 shares of stock represented; in person, 1,368 shares, as follows:

Caleb Bradley, 30 shares.
F. W. Bradley, 10 shares.
W. T. Rankin, 20 shares.
Edward Whitesides, 40 shares.
W. A. Haffner, 8 shares.
J. B. Swann, 10 shares.
Frost Torrence, 50 shares.
W. O. Sample, 10 shares.
J. M. Sloan, 20 shares.
Textile Mill Supply Co., 150 shares.
E. H. Adams, 20 shares.
Jno. F. Love and Geo. A. Gray, 1,000 shares.
Total, 1368 shares in person; and 2,462 shares by proxies, to-wit:
A. C. Lineberger, 100 shares, proxy to John F. Love.
J. L. Agurs, 100 shares, proxy to Geo. A. Gray.
H. A. White, 50 shares, proxy to John F. Love.
E. E. Gillespie, 5 shares, proxy to John F. Love.
Fate M. Wicker, 5 shares, proxy to John F. Love.
Sarah E. Whitin, 100 shares, proxy to John F. Love.
Whitridge, White & Co., 5 shares, proxy to John F. Love.
Henry T. Whitin, 300 shares, proxy to John F. Love.
Nancy Aiken, 7 shares, proxy to John F. Love.
S. L. Morris, 15 shares, proxy to John F. Love.
W. P. White, 10 shares, proxy to John F. Love.
Wm. E. McIlwaine, 20 shares, proxy to John F. Love.
Mrs. Emma Sagendolph, 10 shares, proxy to John F. Love.
Arthur Sangendolph, 10 shares, proxy to John F. Love.
J. A. Dickey, 20 shares, proxy to John F. Love.
L. G. Dick, 20 shares, proxy to John F. Love.
Mrs. Lula M. Barr, 15 shares, proxy to John F. Love.
Woodward, Baldwin & Co., 500 shares, proxy to John F. Love.
W. J. Roddey, 10 shares, proxy to W. T. Rankin.
Mrs. Jno. Harvey, 5 shares, proxy to John F. Love.
Jno. Harvey, Jr., 5 shares, proxy to John F. Love.
Jas. E. Mitchell, 250 shares, proxy to John F. Love.
Jno. J. Mitchell, 30 shares, proxy to John F. Love.
W. T. Berry, 20 shares, proxy to John F. Love.
Jno. McGill, 100 shares, proxy to John F. Love.

144 Irvin Shupp, 50 shares, proxy to John F. Love
Caleb J. Milne, 25 shares, proxy to John F. Love.
Mrs. Mary A. Pritchard, 5 shares, proxy to John F. Love.
W. G. Neville, 10 shares, proxy to John F. Love.
Stephen Greene, 50 shares, proxy to John F. Love.
J. H. Wilkins, 3 shares, proxy to John F. Love.
C. M. Cooke, 2 shares, proxy to John F. Love.
Stephen Greene, 100 shares, proxy to A. Burwell.
W. L. Wells, 500 shares, proxy to John F. Love.
Total, 2,462 shares by proxies.

And it appearing from the report of said committee that a majority of all the stock subscribed for and issued by said corporation, to-wit: 3,830 shares, is represented either in person or by proxy, the meeting was declared duly organized; whereupon John F. Love and Geo. A. Gray submitted the following report, viz.:

"To the stockholders of the Loray Mills:

The undersigned respectfully report that, assuming to act for your company, and with the approbation of all the stockholders, they purchased for the company the land upon which the mill building is erected, containing 143 acres, as described in the deeds, which have been duly registered in this county. They paid for this land out of the money in their hands subscribed to the stock of this company $10,310.17, as will appear by referring to the said deeds.

We adopted as the seal of the company a seal which makes this impression, and have used this in all our acts done in the name of the company.

We have issued stock to the parties named in the list of stockholders hereto attached and have received in cash or machinery the par value therefor.

The condensed statement hereto attached will show the disbursements made by us and under our direction on account of the company, and will also show its resources and liabilities, all of which may be verified by you by referring to the books of account which are herewith also submitted to you.

We respectfully ask the stockholders to ratify and confirm what we have done in their behalf, in the issuing of stock, in the purchase of lands, in the erection of buildings thereon, and the purchase of machinery therefor.

This the 8th day of July, 1901.

(Signed.) GEO. A. GRAY.
(Signed.) JNO. F. LOVE."

145 **List of Stockholders Attached to the Foregoing Report.**

A. C. Lineberger, Mt. Holly, N. C., 100 shares.
J. L. Agurs, Chester, S. C., 100 shares.
H. A. White, trustee, Philadelphia, Pa., 50 shares.
E. E. Gillespie, Greensboro, N. C., 5 shares.
Kate M. Wicker, Carthage, N. C., 5 shares.
Caleb Bradley, Gastonia, N. C., 30 shares.
Whitridge, White & Co., Baltimore, Md., 5 shares.
Sarah E. Whitin, Whitinsville, Mass., 100 shares.
Henry T. Whitin, Northbridge, Mass., 300 shares.
Nancy Aiken, Yorkville, S. C., 7 shares.
S. L. Morris, Macon, Ga., 15 shares.
W. P. White, Philadelphia, Pa., 10 shares.
Wm. E. McIlwaine, Pensacola, Fla., 20 shares.
Jas. G. Garland, Biddeford, Me., 15 shares.
Jas. E. Orr, Worcester, Mass., 10 shares.
F. W. Bradley, Concord, N. C., 10 shares.
W. T. Rankin, Gastonia, N. C., 20 shares.
Edward Whitesides, Gastonia, N. C., 40 shares.
Emma Sagendolph, Spencer, Mass., 10 shares.
Arthur Sagendolph, Spencer, Mass., 10 shares.
W. Howard, Easton, Pa., 10 shares.
J. A. Dickey, Washington, D. C., 20 shares.
L. G. Dick, Lynchburg, Va., 20 shares.
Mrs. M. V. Patterson, Chester, S. C., 20 shares.
Lula M. Barr, Ridge Springs, S. C., 15 shares.
Woodward, Baldwin & Co., New York city, 500 shares.
W. J. Roddey, Rock Hill, S. C., 10 shares.
W. A. Haffner, Bowling Green, S. C., 8 shares.
Mrs. John Harvey, Snow Hill, N. C., 5 shares.
Jno. Harvey, Jr., Snow Hill, N. C., 5 shares.
Jas. E. Mitchell, Philadelphia, Pa., 250 shares.
Jno. J. Mitchell, Philadelphia, Pa., 30 shares.
J. B. Swann, Bullock's Creek, S. C., 10 shares.
Frost Torrence, Gastonia, N. C., 50 shares.
Wm. T. Berry, Lynchburg, Va., 25 shares.
W. O. Sample, Lodo, N. C., 10 shares
John McGill, Philadelphia, Pa., 100 shares.
Irvin Shupp, Philadelphia, Pa., 50 shares.
J. M. Sloan, Gastonia, N. C., 20 shares.
Jno. F. Love and Geo. A. Gray, Gastonia, N. C., 1,000 shares.
Mrs. John J. Mitchell, Jr., Boston, Mass., 5 shares.
Mrs. M. A. Gould, Boston, Mass., 10 shares.
A. G. Brice, Chester, S. C., 10 shares.
Caleb J. Milne, Philadelphia, Pa., 25 shares.
D. J. Currie, Chapel Hill, N. C., 9 shares.

146 Mary A. Pritchard, Blacksburg, Va., 5 shares.
W. G. Neville, Yorkville, S. C., 10 shares.
Miss V. Berry, Lynchburg, Va., 3 shares.
Stephen Greene, Boston, Mass., 50 shares.
Textile Mill Supply Co., Charlotte, N. C., 150 shares.
J. H. Wilkins, Bessemer City, N. C., 3 shares.
C. M. Cooke, Bessemer City, N. C., 2 shares.
Saco & Pettee Machine Shops, Newton Upper Falls, Mass., 100 shares.
W. L. Wells, Vicksburg, Miss., 500 shares.
J. L. Falls, Gastonia, N. C., 10 shares.
E. H. Adams, Bowling Green, S. C., 20 shares.
Total, 3,932 shares.

Condensed Statement Showing Disbursements, Also Resources and Liabilities Attached to the Foregoing Report.

Resources.

Real estate	$488,874.11	
Machinery	371,934.48	
Interest	28.25	
Insurance	3,922.19	
General Fire Extinguisher Co.	1,714.33	
Cash in bank	889.49	
Total		$867,362.85

Liabilities.

Bills payable	$24,168.36	
Standard Oil Co.	25.29	
U. S. Cast Iron P. & F. Co.	3,000.00	
Michigan Brass & Iron Works	1,302.23	
Saco & Pettee Mch. Shops	33,404.80	
Jones & Laughlin	36,304.88	
B. F. Sturtevant Co	10,846.55	
Cohoes I. F. & Mach. Shops	11,495.00	
Whitin Machine Shops	1,164.66	
Green Fuel Economizer Co.	2,954.72	
Draper Co.	98,213.60	
Textile Mills Supply Co.	24,901.54	
C. & G. Cooper Co.	71,527.71	
Lockwood, Greene & Co.	767.71	
Salem Foundry & Mch. Shop	2,799.63	
Flynt Building & Cons. Co.	150,511.17	
J. L. Bryan	625.00	
B. R. Smith	150.00	
Stock issued	393,200.00	
Total		$867,362.85

147 On motion of J. M. Sloan, seconded by R. B. Goff (of the Textile Mill Supply Co.), said report was unanimously accepted, adopted and approved, as is shown by the following stock vote:

A. C. Lineberger, 100 shares, by Jno. F. Love, proxy vote aye.
J. L. Agurs, 100 shares, by Geo. A. Gray, proxy vote aye.
H. A. White, trustee, 50 shares, by Jno. F. Love, proxy vote aye.
E. E. Gillespie, 5 shares, by Jno. F. Love, proxy vote aye.
Kate M. Wicker, 5 shares, by Jno. F. Love, proxy vote aye.
Calbe Bradley, 30 shares, by in person, vote aye.
Whitridge, White & Co., 5 shares, by Jno. F. Love, proxy vote aye.
Sarah E. Whitin, 100 shares, by Jno. F. Love, proxy vote aye.
Henry T. Whitin, 300 shares, by Jno. F. Love, proxy vote aye.
Nancy Aiken, 7 shares, by Jno. F. Love, proxy vote aye.
S. L. Morris, 15 shares, by Jno. F. Love, proxy vote aye.
W. P. White, 10 shares, by Jno. F. Love, proxy vote aye.
Wm. E. McIlwaine, 20 shares, by Jno. F. Love, proxy vote aye.
F. W. Bradley, 10 shares, in person, vote aye.
W. T. Rankin, 20 shares, in person, vote aye.
Edward Whitesides, 40 shares, in person, vote aye.
Emma Sagendolph, 10 shares, by Jno. F. Love, proxy vote aye.
Arthur H. Sagendolph, 10 shares, by Jno. F. Love, proxy vote aye.
J. A. Dickey, 20 shares, by Jno. F. Love, proxy vote aye.
L. G. Dick, 20 shares, by Jno. F. Love, proxy vote aye.
Lula M. Barr, 15 shares, by Jno. F. Love, proxy vote aye.
Woodward, Baldwin & Co., 500 shares, by Jno. F. Love, proxy vote aye.
W. J. Roddey, 10 shares, by T. W. Rankin, proxy vote aye.
W. A. Haffner, 8 shares, in person, vote aye.
Mrs. Jno. Harvey, 5 shares, by Jno. F. Love, proxy vote aye.
Jno. Harvey, Jr., 5 shares, by Jno. F. Love, proxy vote aye.
Jas. E. Mitchell, 250 shares, by Jno. F. Love, proxy vote aye.
Jno. J. Mitchell, 30 shares, by Jno. F. Love, proxy vote aye.
J. B. Swann, 10 shares, in person, vote aye.

148 Frost Torrence, 50 shares, in person, vote aye.
Wm. T. Berry, 25 shares, by Jno. F. Love, proxy vote aye.
W. O. Sample, 10 shares, in person, vote aye.
Jno. McGill, 100 shares, by Jno. F. Love, proxy vote aye.
Irvin Shupp, 50 shares, by Jno. F. Love, proxy vote aye.
J. M. Sloan, 20 shares, in person, vote aye.
Jno. F. Love and Geo. A. Gray, 1,000 shares, in person, vote aye.
Caleb J. Milne, 25 shares, by Jno. F. Love, proxy vote aye.
Mary A. Pritchard, 5 shares, by Jno. F. Love, proxy vote aye.
W. G. Neville, 10 shares, by Jno. F. Love, proxy vote aye.
Stephen Green, 150 shares, by Jno. F. Love, proxy vote aye.
Textile Mills Supply Co., 150 shares, in person by R. B. Goff, vote aye.
J. H. Wilkins, 3 shares, by Jno. F. Love, proxy vote aye.
C. M. Cooke, 2 shares, by Jno. F. Love, proxy vote aye.
W. L. Wells, 500 shares, by Jno. F. Love, proxy vote aye.
E. H. Adams, 20 shares, in person, vote aye.
Total vote, 3,830 shares, aye.

On motion, the seal of the company, the imprint of which is attached to the report heretofore adopted, was accepted an- unanimously adopted as the seal of the corporation.

On motion, the following by-laws were unanimously adopted by the same stock vote, by which report of Geo. A. Gray and Jno. F. Love, as above recored was adopted:

By-Laws of the Loray Mills.

Article I. Stockholders.

The annual meeting of the stockholders of the company shall be held at the office of the company, in Gastonia, North Carolina, on the second Tuesday in March, in each year, at two o'clock P. M., for the purpose of the election of directors and the transaction of such other business as may lawfully come before the meeting. The notice of such annual meeting shall be given to each stockholder of record appearing on the books of the corporation by sending through the mail to their address appearing on the books, at least ten days prior to such meeting, a written or printed notice signed by the secretary, stating the time and place of such meeting.

Special meetings of the stockholders may be called by the Board of directors and notice thereof shall be given in the same manner as

149 is provided with respect to the annual meetings, and shall state the purpose for which such special meetings are called, and they shall be held at the company's office.

Each stockholder shall be entitled to cast one vote for each share of stock held by him at any election, or on any subject before any annual or special meeting of the stockholders, and such votes may be cast either in person or by proxy.

Article 2. Board of Directors.

Section I. The Board of Directors shall consist of five (5) stockholders. They shall be elected immediately after the adoption of these by-laws, and annually thereafter at the annual meetings.

Section II. The Board of Directors shall have the management and control of the business of the corporation, and shall employ such agents and servants as they may deem advisable, and fix the rates of compensation of all officers, agents and employees.

Section III. Express power and authority are hereby conferred upon the Board of Directors, from time to time, to borrow on the credit and responsibility of the corporation such sums of money as they may deem necessary or proper for the purpose and interests of the corporation, in such form and for such time as they may deem proper, and to pledge or mortgage any or all stocks, bonds, securities or other estate, real or personal, belonging to the corporation, as security for the repayment of such loans and advances.

Section IV. The Board of Directors shall meet at such times and places as they may by resolution determine, provided, however, that they shall meet at least as often as once in every twelve months.

Section V. Whenever any vacancies shall occur in the Board of Directors by death, resignation or otherwise, the same shall be filled without undue delay by the majority vote by ballot by the remaining members of the Board. The person or persons so chosen shall hold office until the next annual meeting, or until his or their successor or successors shall be elected.

Section VI. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business.

Article 3. Officers.

Section I. The officers of the corporation shall be a president, a vice-president and secretary and treasurer. The office of secretary and treasurer may be held by the same person.

150 Section II. The officers shall be elected by the Board of Directors by a majority vote of the whole number of directors. The first election shall be held immediately after the organization of the Board of Directors. Subsequent elections shall be held annually on the day of the regular meeting of the Board of Directors next ensuing the annual election. The day to be fixed by resolution of the Board of Directors.

Section III. It shall be the duty of the president to preside at all meetings of the stockholders and of the directors, and to attend meetings of any committee when requested by the chairman, to sign all certificates of stock, and to cause the seal of the corporation to be attached thereto when required. He shall have custody of the seal of the corporation, and power to affix the same to any and all such documents and instruments as the Executive Committee or Board of Directors may authorize to be authenticated by the corporate seal. The president may from time to time call special meetings of the Board of Directors whenever he shall deem proper to do so, and shall do so whenever three members of the Board shall request him in writing to do so. He shall at all times exercise a general supervision and direction over the affairs of the corporation. In all cases where the duties of the subordinate officers and agents of the corporation are not specially prescribed by the by-laws or resolution of the Board, such officers and agents shall obey the orders and directions of the president.

Section IV. The vice-president shall perform such duties as shall be assigned to him by the Executive Committee or Board of Directors. In case of the death, absence or inability of the president to act, his powers shall be exercised by the vice-president; and in case of the death, absence or inability of the vice-president the duties and powers of the president shall devolve upon one of the directors, to be appointed by the Executive Committee.

Section V. The secretary shall keep a record in due form of the proceedings all meetings of the stockholders, of the directors and of the Executive Committee and also of the other committees of the Board. He shall also prepare and keep proper books of account of the business of the corporation, subject to the inspection and direction of the president or Executive Committee of the Board of Directors. All books, papers and correspondence shall be kept in the office of the corporation; and all such, except as the same are especially placed in the custody of some other officer, shall be in charge of the secretary, and shall be open at all times to the inspection of the directors. The secretary shall sign all documents requiring the signature of the president, and shall perform the duties

151 usually appertaining to the office of secretary. In case of the death, absence or inability of the secretary to act, his duties and powers shall be exercised by a secretary pro tempore, to be appointed by the Executive Committee.

Section VI. The treasurer shall keep a record of all moneys received and paid out and of all vouchers and receipt given therefor. He shall examine and approve all checks for payment of money, and no voucher or certificate of any kind shall be issued from the office unless his inspection or approval be certified thereon. He shall have general charge of all books, vouchers and papers belonging to the corporation, except such as are under the control of the secretary, and such as are specially placed under the control of some other officer, and shall perform such other duties as are incident by law to the office of treasurer, and as may be required by the president or Executive Committee or Board of Directors.

Section VII. All moneys of the corporation or under its charge deposited in any bank or other place of deposit shall be deposited to the credit of the corporation in its corporate name.

Section VIII. In case of the death, resignation or removal of any officer of the corporation, the Board of Directors shall elect his successor, who shall hold his office until the next annual meeting of the board.

Section IX. The Board of Directors may annually elect an Executive Committee, consisting of the president and two other directors, who shall hold their offices until their successors are elected. All vacancies shall be filled by the Board of Directors. The Executive Committee shall meet at such times as shall be fixed by themselves or the Board of Directors.

Section X. The Executive Committee shall exercise all the powers of the Board of Directors when such board is not in session. Regular minutes of the proceedings of the Executive Committee shall be kept in a book provided for that purpose, which shall always be open to the inspection of the directors, and the proceedings of such committee for the *proceeding* time since their last meeting shall be reported to and read at each meeting of the Board of Directors.

Article 4. Certificates of Stock.

Section I. Certificates of the capital stock of the corporation shall be numbered and registered as they are issued. They shall exhibit the holder's name, place of residence and the number of shares and

152 shall bear the corporate seal. Transfers of stock shall only be made on the books of the corporation, in the presence of the treasurer, or other authorized officer of the corporation, by the holder in person or by attorney; and the possession of a certificate of stock (as between the holder and the corporation) shall not be regarded as vesting any ownership of the same in any person other than the registered owner.

ARTICLE 5. CORPORATE SEAL.

Section I. The corporate seal of the corporation shall be a circular seal, with the name of the corporation around the border and the date of the organization in the center. The Board of Directors may change the style of the corporate seal at their pleasure.

ARTICLE 6. DEFAULTING SUBSCRIBERS.

Section I. If any subscriber for stock of the corporation shall fail to pay for the same when called for by the Board of Directors for two months, the stock of such delinquent may be declared forfeited by the Board of Directors and sold for account of such delinquent, publicly, after thirty days' notice, and the net proceeds of such sale be applied first to all amounts due upon such stock, and the balance, if any, paid to the delinquent; provided, however, that the forfeiture and sale of the stock of any delinquent shall not release him from his original subscription; and such delinquent shall forfeit his right to vote at all meetings of the stockholders.

Jno. F. Love, Geo. A. Gray, Frost Torrence, J. M. Sloan and W. T. Rankin were then put in nomination for directors of the company, and the election ordered to be proceeded with by ballot under section 39 of the new corporation act. The poll having remained open for one hour the ballots were then counted, and it appearing that the said Jno. F. Love, Geo. A. Gray, Frost Torrence, J. M. Sloan and W. T. Rankin each received 3,830 votes for directors of the said corporation, the same being all the votes cast, they were thereupon declared unanimously elected such directors until the next annual election (the vote by which said directors were elected was the same vote recorded in adopting the report of Jno. F. Love and Geo. A. Gray).

There being no further business, on motion, the meeting adjourned.

W. T. RANKIN, Chairman.

FROST TORRENCE, Secretary.

153 **FIRST MEETING DIRECTORS OF THE LORAY MILLS.**

Gastonia, N. C., July 8th, 1901.

First meeting of the directors of the Loray Mills, held in the office of the Gastonia Banking Co., in the town of Gastonia, on the 8th day of July, 1901, six o'clock P. M., present Geo. A. Gray, Jno. F. Love, Frost Torrence and W. T. Rankin.

On motion, W. T. Rankin was called to the chair and Frost Torrence requested to act as secretary.

On motion, Geo. A. Gray was unanimously elected president, and Jno. F. Love secretary and treasurer of the corporation, to hold office until their successors are duly elected.

On motion, the directors' meeting adjourned.

W. T. RANKIN, Chairman.

FROST TORRENCE, Secretary.

Gastonia, N. C., July 11th, 1901.

The Board of Directors of the Loray Mills met this day, each director having first received three days' notice that this meeting would be held; *prest* Geo. A. Gray, Jno. F. Love, J. M. Sloan, W. T. Rankin and Frost Torrence.

On motion of Frost Torrence, the following resolution was unanimously adopted:

Resolved, That in the judgment of the Board of Directors of the Loray Mills, it is advisable and most for the benefit of the corporation, to-wit: The Loray Mills, that it should be dissolved, in order that the mill and manufacturing plant of the corporation may be completed and operated by a corporation organized with more liberal charter rights.

On motion of W. T. Rankin, the following further resolutions were adopted:

Resolved I., That notice of the adoption of the foregoing and above resolution be mailed, within ten days from the date hereof, by the secretary, to each stockholder of the corporation residing in the United States, to his or her last known postoffice address.

Resolved II., That a like notice, beginning within said ten days, be published in the Gastonia Gazette (a weekly newspaper, published in the county of Gaston), once a week for four successive weeks, of a meeting of the stockholders of said corporation, to be

154 held at the office of the corporation, to take action upon the resolution so adopted by said Board of Directors.

Resolved III., That the meeting of the stockholders above provided for be held on the 16th day of August, 1901, at 2:30 o'clock P. M., at the office of the company in the rooms of the Gastonia Banking Company, in the town of Gastonia, N. C.

Resolved IV., That the president and the secretary of the corporation be, and they are, hereby authorized to issue and publish all such notices as may be necessary for the purpose of carrying out the foregoing resolutions.

GEO. A. BRAY, President.

JNO. F. LOVE, Secretary.

Notice of a Meeting of the Stockholders of the Loray Mills.

Notice is hereby given that, at a meeting of the directors of the Loray Mills, held in the office of the mills, in the town of Gastonia, N. C., on the 11th day of July, 1901, the following resolution was unanimously adopted by the whole Board:

"Resolved, That in the judgement of the Board of Directors of the Loray Mills, it is advisable and most for the benefit of the corporation, to-wit, the Loray Mills, that it should be dissolved, in order that the mill and manufacturing plant of the corporation may be completed and operated by a corporation with more liberal charter rights."

A meeting of the stockholders of the Loray Mills is, therefore, hereby called, to be held at the office of the corporation, in the rooms of the Gastonia Banking Company, in the town of Gastonia, N. C., on the 16th day of August, 1901, at 2:30 o'clock P. M., to take action upon the foregoing and above quoted resolution, so adopted by the Board of Directors of said corporation, pursuant to the order of the Board and the provisions of section 34 of an act passed by the General Assembly of North Carolina (session 1901) entitled "An act to revise the corporation laws of North Carolina."

This, the 12th day of July, 1901.

GEO. A. GRAY, President.

JNO. F. LOVE, Secretary.

Gastonia, N. C., Aug. 16th, 1901.

Meeting of the stockholders of the Loray Mills, held at 2:30 P. M. to-day, at the office of the corporation in the rooms of the

155 Gastonia Banking Co., Gastonia, N. C., pursuant to due notice issued by Geo. A. Gray, president, and Jno. F. Love, secy., by order of the Board of Directors, at their meeting, July 11th, 1901.

On motion, W. T. Rankin was unanimously elected chairman of the meeting, and Frost Torrence was in like manner elected secretary.

On motion, Textile Mill Supply Co. (by A. J. Crampton), W. G. Neville and J. M. Sloan were appointed a committee to examine and report the number of shares of stock in said company represented either in person or by proxy:

Said committee reported 1,352 shares of stock represented in person, and 1,554 shares of stock represented by proxies; total, 2,906 shares of stock represented, as follows:

In person:

W. O. Sample, 10 shares.
Textile Mill supply Co., 150 shares.
E. W. Whitesides, 40 shares.
E. H. Adams, 20 shares.
T. Torrence, 50 shares.
W. T. Rankin, 20 shares.
Caleb Bradley, 30 shares.
W. G. Neville, 10 shares.
J. M. Sloan, 20 shares.
Geo. A. Gray and Jno. F. Love, 1,002 shares.
Total, 1,352 shares.

By proxies:

J. L. Falls, 10 shares, by F. Torrence, proxy.
W. J. Roddey, 10 shares, by W. T. Rankin, proxy.
Mrs. M. A. Pritchard, 5 shares, by W. G. Neville, proxy.
Nancy Aiken, 7 shares, by W. G. Neville, proxy.
J. L. Agurs, 100 shares, by Geo. A. Gray, proxy.
Lula M. Barr, 15 shares, by Jno. F. Love, proxy.
Woodward, Baldwin & Co., 500 shares, by Jno. F. Love, proxy.
Irvin Shupp, 50 shares, by Jno. F. Love, proxy.
Jno. McGill, 100 shares, by Jno. F. Love, proxy.
J. A. Dickey, 20 shares, by Jno. F. Love, proxy.
H. A. White, trustee, 50 shares, by Jno. F. Love, proxy.
John Harvey, Jr., 10 shares, by Jno. F. Love, proxy.
L. G. Dick, 20 shares, by Jno. F. Love, proxy.
W. T. Berry, 25 shares, by Jno. F. Love, proxy.
H. T. Whitin, 300 shares, by Jno. F. Love, proxy.

156 Mrs. J. J. Mitchell, Jr., 5 shares, by Jno. F. Love, proxy.
Mrs. M. A. Gould, 10 shares, by Jno. F. Love, proxy.
A. C. Lineberger, 100 shares, by Jno. F. Love, proxy.
S. Greene, 150 shares, by Jno. F. Love, proxy.
Whitride, White & Co., 5 shares, by Jno. F. Love, proxy.
E. E. Gillespie, 5 shares, by Jno. F. Love, proxy.
D. J. Currie, 9 shares, by Jno. F. Love, proxy.
Kate M. Wicker, 5 shares, by Jno. F. Love, proxy.
S. L. Morris, 15 shares, by Jno. F. Love, proxy.
Wm. E. McIlwaine, 20 shares, by Jno. F. Love, proxy.
W. A. Haffner, 8 shares, by E. H. Adams, proxy.
Total, 1,554 shares.

And it appearing from the report of said committee that more than two-thirds of all the stock subscribed for and issued by said corporation, to-wit, 2,906 shares, is represented either in person or by proxy, the chairman declared the meeting legally constituted and ready for the transaction of business.

Whereupon Geo. A. Gray, president, and Jno. F. Love, secretary, submitted the following report, which is inserted on the opposite page.

To the Stockholders of the Loray Mills:

We beg to submit to you, for your consideration, a statement of the affairs of the corporation on August 1st, 1901, as shown by the trail balance made by W. H. Herrick, accountant, and attached to this report and marked "Exhibit A."

It will be seen from this trial balance that the debts of the corporation, other than (capital stock), is $494,634.79.

This indebtedness is due to the persons named on this trial balance.

We submit also a statement made by the said accountant, marked "Exhibit B," which shows that it will require $264,125.25 additional to complete the mill with 25,000 spindles, so that the manufacture of goods may be begun.

This exhibit also shows that it will require $375,180.41 in addition to the sum heretofore mentioned to complete the mill up to its capacity of 50,000 spindles, so as to begin the manufacture of goods with that equipment.

It appears, therefore, that to pay the debts of the corporation heretofore contracted ($494,634.79) and to put in the mill an equipment of 25,000 spindles, will cost $758,760 04.

It further appears that, in order to put into the mill its full equipment of 50,000 spindles it will cost $1,133,940.45.

These estimated sums are in addition to the amount heretofore subscribed and paid by the stockholders, to-wit, $393,400.00.

157 It appears, therefore, that the stockholders of the corporation, in order to equip the mill up to 25,000 spindles and pay its debts, must raise $758,760.04.

And in order to put in the mill its full equipment of 50,000 spindles and pay its debts, the stockholders must raise $1,133,940.45.

We say frankly to the stockholders, that the great change that has taken place in the market for cotton goods since this enterprise was begun has produced such a condition of affairs that it is, in our opinion, not to be hoped that the stockholders can raise the capital necessary to complete this mill.

We, therefore, have applied to the larger creditors of the corporation and to those manufacturers of machinery who are interested therein for aid in this crisis of affairs of the company.

The result of our negotiations was the making of the contract or agreement, a copy of which is hereto attached and marked "Exhibit C."

The corporation mentioned in that agreement has been duly organized and now makes to your corporation the proposition contained in the paper hereto attached and marked "Exhibit D."

We append to this report an extract from the charter of the Maine corporation, with reference to the issuing of preferred stock and the rights of the holders of such stock, which copy is marked "Exhibit E."

We append to this report also, a statement made by the accountant, showing the creditors of your corporation that will be paid in full if the proposed arrangement is completed, and what creditors will accept preferred stock in the Maine corporation in settlement of their claims against your corporation.

If this arrangement is carried out, every dollar that your corporation owes will be paid at once, or as soon as the necessary transfers can be made and the final arrangements completed. Each one of you will receive a share of stock in the Maine corporation for every share of stock held by you in this corporation. The total common stock of the Maine corporation will not exceed $400,000.00, and the preferred stock will be $750,000.00, and will be sold only at par, and every dollar of the proceeds of the sale will be applied to the equipment of the mill.

We recommend to the stockholders the acceptance of this proposition, because we are fully satisfied that it is not in your power, in the present state of the market, and in the present condition of financial affairs to raise the money to carry on the great work which we have undertaken, and the plan proposed is the only one that seems to us to hold out any hope for the completion of the mill and its operation and for saving you what you have invested in this enterprise.

158 We are informed by the representatives of the Maine corporation, that each stockholder of the North Carolina corporation may have the privilege of purchasing at par shares of preferred stock in the Maine corporation up to the amount of the stockholders' holdings in the North Carolina corporation; that is to say, the stockholders of the North Carolina corporation have the privilege of investing in the preferred stock of the Maine corporation the same amount that they have invested in the North Carolina corporation, or any less amount.

We are also authorized to say to the stockholders that the Draper Company and the Whitin Machine Works, who have kindly consented to take a large amount of this preferred stock in payment for machinery to be furnished the mill, will sell $200,000.00 worth of that stock at par, on twelve months' credit, six per cent. interest, or any less amount, to anyone of the stockholders who desire to purchase, and will give reasonable security for compliance with his contract of purchase.

We make this statement to the stockholders because we deem it important that they should know that, whatever advantage, if any, those who furnish the money to complete the mill may take, under the proposed plan of operation, is open to them, if they choose to avail themselves of the opportunity, and that each one of you may become a holder of preferred stock in the corporation which proposes to complete and operate this mill.

We are, as you know, large stockholders, and looking to our own interests, we favor the acceptance of this offer of the Maine corporation, believing that this is the best plan that can be devised for the completion of the mill, and fearing, as we do, that disaster may come unless we accept the assistance offered us in this form.

It will be noted that the proposition of the Maine corporation is conditioned upon the statement of assets and liabilities dated July 1st.

It is proper to say here, that since this proposition was made, the Maine corporation have agreed to make the same proposition upon the statement of assets and liabilities dated August 1st, and submitted with this report; the same being "Exhibit A."

We deem it proper to state, in this connection, that the estimates made by the accountant, as to the cost of equipping the mill fully with 25,000 spindles or with 50,000 spindles, is an estimate only, and while we believe the same to be substantially correct, the result may show that it will require more or less than the sums named to accomplish the results indicated.

It is also true that the amount of the preferred stock, not to exceed $750,000.00 in the aggregate, may be apportioned among the several preferred stockholders in amounts somewhat different from those mentioned in the report of the auditor. The estimate of pre-

159 ferred stock to be taken by each one of the manufacturers, as stated in the report of the accountant, is believed by us to be substantially correct.

This, the 16th day of August, 1901.

GEO. A. GRAY, President.

JNO. F. LOVE, Treasurer.

Trial Balance, August 1, 1901.

Resources.

Real Estate	$489,527 48	
Machinery	389,574 26	
Interest	269 59	
Insurance	3,922 19	
Cash	4,741 27	$888,034 79

Liabilities.

Capital Stock	$393,400 00	
Bills Payable	23,792 63	
Woodward, Baldwin & Co., for new shares to be issued	5,000 00	
J. L. Bryan, cash Aug. 20th, 1900, for old shares issued	625 00	
Standard Oil Co., July 1, 1901	25 29	
U. S. Cast Iron Pipe & Foundry Co.	2,441 30	
Michigan Brass & Iron Works	1,302 23	
Saco & Pettee Machine Shops	33,404 80	
Jones & Laughlin	36,304 88	
B. F. Sturtevant Co.	10,846 55	
General Fire Ex. Co.	16,157 93	
Cohoes Iron Foundry & Machine Co.	11,495 00	
Whitin Machine Works	1,164 66	
Gree Fuel Economizer Co.	2,954 72	
Draper Co.	98,213 60	
Textile Mill Supply Co.	24,901 54	
C. & G. Cooper Co.	71,527 71	
Lockwood, Green & Co.	1,016 15	
Salem Foundry & Machine Shops	2,799 63	
Flynt Building & Construction Co.	150,511 17	
B. R. Smith, old stock to be issued	150 00	$888,034 79

WILLIAM H. HERRICK,
Accountant.

Aug. 12, 1901.

160 **List of Contracts not Completed, Partly Estimated.**

		2nd, 25,000 Spindles.	1st, 25,000 Spindles.
The Whitin Machine Works—			
Sept. 6, 1899, 1st installment			178,763 65
Feby. 20, 1900, 2nd installment		186,185 21	
Electric Uniform Time System, the American Watchman's Time Detector Co., 380–10 per cent			342 00
Kitson Machine Co., cotton blowing system			2,360 00
Kitson Machine Co., picking machinery, 1st installment			26,600 00
2nd installment		28,000 00	
Curtis & Marble Machine Co., 12 cloth room machines (may cut this ½) all.			4,684 00
The American Watchman's Time Detector Co., 15 station electric system, 294–10 per cent			264 60
The Draper Co., ½ Mill	129,000		
Credited on account	96,000		33,000 00
½ Mill		129,000 00	
The Carter & Gillespie Electric Co., incandescent electric lighting all			7,156 00
B. F. Sturtevant Co., 2 generators for electric lighting all			6,000 00
B. F. Sturtevant Co., picker, dust piping and fans, all			4,455 00
Saco & Pettee Machine Shops, 1st installment,	37,700		
Paid	10,000		
2nd installment		37,700 00	
$200,000 additional insurance placed before July 1, 1901, estimated at			500 00
		380,885 21	291,825 25

161	Deduct Saco & Pettee Machine Shops credited to them, see trial balance..	5,704 80	27,700 00
		375,180 41	264,125 25

Small additional estimate for Flynt Building & Construction Co. for the month of July, 1901; said estimate will be rendered by the engineers.

WILLIAM H. HERRICK,
Accountant.

Aug. 12, 1901.

Agreement by and between the Flynt Building & Construction Company et al.

This agreement made this day of A. D., 1901, by and between the Flynt Building & Construction Company, a duly organized corporation doing business at Palmer, Massachusetts; C. & G. Cooper Company, a duly organized corporation doing business at Mt. Vernon, Ohio, the Draper Company a duly organized corporation doing business at Hopedale, Massachusetts, Saco & Pettee Machine Shops, a duly organized corporation doing business at Newton, Massachusetts, Kitson Machine Company, a duly organized corporation doing business at Lowell Massachusetts, Jones & Laughlins, Limited, a duly organized corporation doing business at Pittsburg, Pennsylvania, General Fire Extinguisher Company, a duly organized corporation, doing business at Providence, R. I., Whitin Machine Works, a duly organized corporation doing business at Whitinsville, Massachusetts, Cohoes Iron Foundry and Machine Company, a duly organized corporation, doing business at Cohoes, N. Y., Salem Foundry and Machine Company, a duly organized corporation doing business at Salem, Massachusetts, and Woodward, Baldwin & Company, co-partners, doing business in New York City, N. Y.;

Witnesseth: Whereas, the ten parties first above mentioned have made sundry contracts with the Loray Mills, a corporation duly organized under the laws of North Carolina, for constructing and equipping a mill of fifty thousand spindles at Gastonia, North Carolina; and

Whereas, said Loray Mills is unable to pay for the completion of said contracts, and said Woodward, Baldwin & Company, selling agents of said Loray Mills, are interested in the completion of said mill as a mill of twenty-five thousand spindles.

162 The parties hereto agree with all the other parties and each party in consideration of the sum of one dollar and other sufficient consideration to said party paid, the receipt of which is hereby acknowledged, and also of the covenants of the other parties hereto, as follows:

A corporation shall be organized under the laws of Maine for the purpose of acquiring all the property and assets of said Loray Mills, with an authorized capital not exceeding $1,250,000, of which $750,000 shall be preferred stock of the par value of $100 per share, entitled to accumulative dividends at the rate of 6 per cent. per year; and, in addition to said 6 per cent., said preferred stock shall receive the same rate of dividend, if any, as is declared upon the common stock. In the distribution of the capital of the company, upon dissolution or otherwise, the preferred stock shall also be preferred to the extent of its par value and all accumulations of undeclared dividends. Each share of preferred stock shall have the same voting power as a share of common stock.

As soon as the issue of said preferred stock is authorized, said Woodward, Baldwin & Co. agree to subscribe for 500 shares of said preferred stock and to pay for the same in cash at the par value thereof, and further agree that they will loan, or cause to be loaned to the treasurer of said new company the sum of about $100,000 upon the note or notes of said new corporation bearing interest at per cent. per annum. One thousand (1,000) shares of said preferred stock shall be set apart for the payment of said note; and said Woodward, Baldwin & Company or said Loray Mills shall dispose of said one thousand (1,000) shares of said preferred stock at par at such times and in such amounts as they shall be able, and pay in the proceeds to the holder of said notes.

The treasurer of the Loray Mills shall hold the remainder of said perferred stock above said 1,500 shares in the treasury to be issued from time to time at its par value in payment of the accounts rendered by said first mentioned ten parties under their aforesaid contracts with said Loray Mills; and said ten parties agree to proceed to fulfil and perform their said contracts in the manner following and to accept such preferred stock at par in payment of their accounts in the manner following and with the exceptions hereinafter noted, to-wit:

Said Flynt Building & Construction Company herebt agrees to carry out its contract and to accept and receive in full payment therefor preferred stock up to the amount of $1,000,000, the balance (if any) to be paid in cash.

Said C. & G. Cooper Company, Jones & Laghlins, Limited, General Fire Extinguisher Company and Salem Foundry and Machine Company, agree to carry out their contracts for equipping the mill, as

163 built, and to accept and receive preferred stock at par in full payment of their accounts.

Said Draper Company, Saco & Pattee Machine Works, Kitson Machine Company, Whitin Machine Company and Cohoes Iron Foundry & Machine Company agree to carry out their contracts so far as is necessary for fitting out and equipping a mill of twenty-five thousand spindles (instead of a mill of fifty thousand spindles), and to accept and receive preferred stock at par in full payment of their accounts.

This agreement shall be binding upon no one of the eleven parties mentioned at the beginning of said agreement until all of such parties have signed, whereupon said agreement shall be in full force and effect.

In testimony whereof, the above named parties have hereunto set their hands the day and year first above written.

DRAPER COMPANY,
By GEO. A. DRAPER, Treas.

THE WHITIN MACHINE WORKS,
G. W. WHITIN, Treas.

FLYNT BUILDING & CONST. CO.,
A. T. WING, Gen'l Mgr.

THE C. & G. COOPER CO.,
F. L. FAIRCHILD, Prest.

SALEM FOUNDRY & MACHINE SHOP,
CHAS. F. CURRWELL, Prop.

THE COHOES IRON FDY. & MACHINE CO.,
D. S. JACKSON, Treas.

SACO & PETTEE MACHINE SHOPS,
By R. P. SNELLING, Treas.

GENERAL FIRE EXTINGUISHER CO.,
By FEDERICK GRINNELL, Prest.

JONES & LAUGHLIN, LIM.,
By GEO. P. BULLARD.

KITSON MACHINE CO.,
By H. C. PERHAM, Treas.

164 In signing this agreement we understand the clause "the sum of about one hundred thousand dollars $100,000," to mean that we will loan or cause to be loaned at least fifty thousand dollars, $50,000, and that the treasury stock after the bills of said ten parties have been paid and our stock taken will be five hundred shares or more preferred stock.

WOODWARD, BALDWIN & CO.

Proposition of the Loray Mills of Maine to the Loray Mills of North Carolina.

To the Loray Mills of North Carolina:

The Loray Mills of Maine, a corporation, makes to the Loray Mills of North Carolina the following proposition: It will purchase from the Loray Mills of North Carolina, the following property of said Loray Mills, to-wit: All the property of the Loray Mills of North Carolina, real and personal and mixed, including real estate, lands, buildings, mill privileges and machinery, tools, special tools, patterns, drawings, letters patent of the United States and of foreign countries, and all rights in, to or under such patents, and rights to *do* or interest in inventions or applications for patents and any patents hereafter issued, together with the entire business of the Loray Mills of North Carolina, and the good will thereof, and all stock on hand, manufactured, unmanufactured, or in process, all cash on hand or on deposit, and all choses in action, including, all claims and demands for any past infringement of letters patent; also all book debts and accounts, accounts receivable, notes and other evidences of indebtedness, and all contracts or agreements of the Loray Mills of North Carolina, or the beneficial interest thereunder, and all rights or benefits to accrue to the Loray Mills of North Carolina under such contracts or agreements, and all other property of the Loray Mills of North Carolina, of whatever name, nature and description, subject, however, to all the contracts and other obligations of the Loray Mills of North Carolina, and all its debts and liabilities; and pay for the aforesaid property of the Loray Mills of North Carolina three thousand nine hundred and thirty-two shares of its common stock, said shares to be non-assessable and fully paid by the transfer to this company of the foregoing property of the Loray Mills of North Carolina, the bona fide and fair valuation of the same being the equivalent of said stock at par; providing that, as part of the transfer of the aforesaid property, the stockholders of the Loray

165 Mills of North Carolina assign to the order of this company their shares of stock in the Loray Mills of North Carolina.

That the before mentioned three thousand nine hundred and thirty-two shares of common stock of this company be paid and delivered simultaneously with the execution of proper instruments transferring all the property of the Loray Mills of North Carolina to this Company, as aforesaid, and that said shares of the common stock of this company be issued and delivered by this company to such person and in such manner as the Loray Mills of North Carolina shall direct to be held by them for the benefit of the Loray Mills of North Carolina and its stockholders, and to be distributed by them among the stockholders of the Loray Mills of North Carolina as and when the stockholders of that Company assign to the order of this Company their shares of stock in the Loray Mills of North Carolina.

The foregoing proposition is made upon the understanding and condition that the assets and liabilities of the Loray Mills of North Carolina are as follows:

July 1st, 1901.

THE LORAY MILLS.

Resources.

Real estate	$488,874.11	
Machinery	371,934.48	
Interest	28.25	
Insurance	3,922.19	
General Fire Extinguisher Co	1,714.33	
Cash in bank	889.49	
Total		$867,362.85

166 Liabilities.

Bills payable	$24,168.36
Standard Oil Co	25.29
U. S. Cast Iron P. & Foundry Co	3,000.00
Michigan Brass & Iron Works	1,302.23
Saco & Pettee Mch. Shops	33,404.80
Jones & Laughlin	33,404.80
Jones & Laughlin	36,304.88
B. F. Sturtevant Co	10,846.55
Cohoes I. F. & Mach. Shops	11,495.00
Whitin Machine Shops	1,164.66
Green Fuel Economizer Co	2,954.72
Draper Co	98,213.60
Textile Mills Supply Co	24,901.54
C. & G. Cooper Co	71,527.71
Lockwood, Greene & Co	767.71
Salem Foundry & Mch. Shop	2,799.63
Flynt Building & C. Co	150,511.17
J. L. Bryan	625.00
B. R. Smith	150.00
Stock issued	393,200.00
	$867,362.85

The above proposition is further made upon the condition that it is accepted by the Loray Mills of North Carolina on or before September 1st, next.

(Signed.) LORAY MILLS,
By ALBERTON LYON, President.

August 13, 1901. Hereunto duly authorized.

ARTICLE VIII.—Capital Stock.

The capital stock of this corporation shall be one million, two hundred and fifty thousand dollars, divided into twelve thousand and five hundred shares of the par value of one hundred dollars per share, of which seven thousand five hundred shares, having a total par value of seven hundred and fifty thousand dollars, shall be preferred stock and five thousand shares, having a total par value of five hundred thousand dollars, shall be common stock. Said seven thousand and five hundred shares of perferred stock shall be entitled from and after the first of the month next after its issue to a cumulative preferred dividend of six per centum per annum out of the net

167 earnings of the corporation, payable at such times and in such instalments as may be determined by the Board of Directors, before any payment is made to the holders of the common stock. If, after payment in any year of such six per cent dividend upon the preferred stock and all dividends at said rate of said preferred stock unpaid in previous years there is a surplus remaining from the net profits of the Company after the establishment and maintenance of such reserves as the Directors deem necessary for the proper management of said Company, such surplus shall be divided pro rata between the preferred and common stock, each share of stock, whether preferred or common, to receive the same dividend. In the distribution of the capital of the Company upon dissolution or liquidation the preferred stockholders shall first be paid in full the par value of their stock, together with all accumulations of unpaid dividends. If there be any proceeds remaining from such dissolution or liquidation after the payment of the preferred stock, and accumulated dividends it shall be applied to the payment of the coomon stock, and if there still shall be any surplus of assets from such dissolution or liquidation after the payment of the common stock in full it shall be divided pro rata between the preferred and common stock.

Each share of preferred stock shall have the same voting power as a share of common stock.

List of Creditors to be Given Preferred Stock Under Agreement.

Saco & Pettee Machine Shops	$33,404 80
General Fire Ex. Co	16,157 93
Salem Foundry & Machine Shops	2,799 63
Draper Co	130,000 00
Kitson Machine Co	28,960 00
Jones & Laughlin	36,304 88
Cohoes Iron Foundry & Machine Co	11,495 00
C. & G. Cooper Co	71,527 71
Whitin Machine Works	180,000 00
Flynt Building & Construction Co	100,000 00
	$610,649 95

168 **List of Creditors to be Paid in Cash.**

Flynt Building & Construction Co.....	$51,000 00	
B. F. Sturtevant Co.....	21,301 55	
U. S. Cast Iron Pipe & Foundry Co.....	2,441 30	
Michigan Brass & Iron Works.....	1,302 23	
Bills payable $23,792.63 less $4,000.00 pd. Aug. 6th.....	19,792 63	
Green Fuel Economizer Co.....	2,954 72	
Textile Mill Supply Co.....	24,901 54	
Lockwood, Greene & Co.....	1,016 15	
The American Watchman's Fire Detector Co.....	606 60	
Curtis & Marble Machine Co.....	4,684 00	
The Carter & Gillespie Electric Co.....	7,156 00	
Estimate on $200,000 insurance.....	500 00	
	$137,656 72	
Add for freights.....	10,000 00	
Add for contingencies.....	7,000 00	
	$154,656 72	
Add	610,649 95	
		$765,306 67
Preferred stock..... $750,000		
Pd. by Woodward, Baldwin & Co..... 5,000		
	$745,000	
To be issued to creditors.....	600,000	
To be issued to Woodward Baldwin & Co. for cash.....	145,000	

Aug. 12, 1901. WILLIAM H. HERRICK,
Accountant.

Resolution to Dissolve Corporation, and Stock Vote.

Whereupon Frost Torrence offered the following resolutions:

Resolved, that the *affirs* of the corporation are in such condition,

169 as appears by the report of the president and treasurer, that a dissolution thereof seems necessary for the best interests of the stockholders, and the stockholders do, therefore, vote that the corporation be dissolved, and the directors are authorized to take such steps as in their judgment, will best carry out the wishes of the stockholders thus expressed.

Resolved, that the best interests of the stockholders require that the proposition made by the corporation known as the Loray Mills, organized under the laws of the State of Maine, as set our in the report of the president and treasurer, be accepted, and the president and treasurer are hereby authorized and empowered to carry out the details of the proposed settlement and to execute all such deeds and other instruments in the name of this corporation and under its seal as will effectuate the purpose of the stockholders, thus expressed.

Resolved, that the president and treasurer report their action in the premises to this meeting, which is adjourned until Saturday, the 31st day of August, 1901, at 2 P. M., when the meeting will convene to hear the report of the said president and treasurer.

On motion of W. G. Neville, seconded by Textile Mill Supply Co. (by P. L. McMahon) the foregoing resolutions were unanimously accepted, adopted and approved as is shown by the following stock vote:

A. C. Lineberger, 100 shares by Jno. F. Love, proxy vote yes.
J. L. Agurs, 100 shares by Geo. A. Gray, proxy vote yes.
H. A. White, trustee, 50 shares by Jno. F. Love, proxy vote yes.
E. E. Gillespie, 5 shares by Jno. F. Love, proxy vote yes.
Kate M. Wicker, 5 shares by Jno. F. Love, proxy vote yes.
Whitride, White & Co., 5 shares by Jno. F. Love, proxy vote yes.
Caleb Bradley, 30 shares, in person, vote yes.
H. T. Whitin, 300 shares by Jno. F. Love, proxy vote yes.
Nancy Aiken, 7 shares, by W. G. Neville, proxy vote yes.
S. L. Morris, 15 shares, by Jno. F. Love, proxy vote yes.
Wm. E. McIlwaine, 20 shares, by Jno. F. Love, proxy vote yes.
W. T. Rankin, 20 shares, in person, vote yes.
E. Whitesides, 40 shares, in person, vote yes.
J. A. Dickey, 20 shares, by Jno. F. Love, proxy vote yes.
L. G. Dick, 20 shares, by Jno. F. Love, proxy vote yes.
Lula M. Barr, 15 shares, by Jno. F. Love, proxy vote yes.

170 Woodward, Baldwin & Co., 500 shares, by Jno. F. Love, proxy vote yes.
W. J. Roddey, 10 shares, by W. T. Rankin, proxy vote yes.
W. A. Haffner, 8 shares, by E. H. Adams, proxy vote yes.
Jno. Harver, Jr., 10 shares, by Jno. F. Love, proxy vote yes.
Frost Torrence, 50 shares, in person vote yes.
W. T. Berry, 25 shares, by Jno. T. Love, proxy vote yes.
W. O. Sample, 10 shares, in person, vote yes.
Jno. McGill, 100 shares, by Jno. F. Love, proxy vote yes.
Irvin Shupp, 50 shares, by Jno. F. Love, proxy vote yes.
J. M. Sloan, 20 shares, in person, proxy vote yes.
Geo. A. Gray and Jno. F. Love, 1,002 shares, in person, vote yes.
Mrs. Jno. J. Mitchell, Jr., 5 shares, by Jno. F. Love, proxy vote yes.
Mrs. M. A. Gould, 10 shares, by Jno. F. Love, proxy vote yes.
D. J. Currie, 9 shares, by Jno. F. Love, proxy vote yes.
Mrs. M. A. Pritchard, 5 shares, by W. G. Neville, proxy vote yes.
W. G. Neville, 10 shares, in person, vote yes.
Stephen Greene, 150 shares, by Jno. F. Love, proxy vote yes.
Textile Mill Supply Co., by P. H. McMahon, 150 shares, in person, vote yes.
J. L. Falls, 10 shares, by Frost Torrence, proxy vote yes.
E. H. Adams, 20 shares, in person, vote yes.
Total vote, 2,906 shares, yes.

There being no further business, on motion the meeting adjourned to meet again at 2 P. M., Saturday, the 31st day of August, 1901.

W. R. RANKIN, Chairman.
FROST TORRENCE, Secretary.

171 **LETTER OF SEPT. 10, 1900.**

Vicksburg, Miss., Sept. 10th, 1900.

Mr. Geo. A. Gray,
Gastonia, N. C.

Dear Sir:

Your favor of Sept. 1st to our Yazoo office has been referred here for answering. The writer has just returned after an absence of several months and found your letter unanswered.

We have taken the matter up this day with the other members of our firm and will let you know in the next few days just what we will do in regard to taking the $100,000 worth of stock in the Loray Mafg. Co. We will state that if the different corporations referred to in your letter as well as the Loray Mfg. Co., will bind themselves to buy their cotton from us for a period of years, we will take the $100,000 in the Loray Mfg. Co.

We have considerable money lying idle that we do not need in our business and are at all times looking for good investments, but $100,000.00 is a larger amount than we have ever put in one enterprise. If we can see a fair return in the way of dividends from the stock of this mill and to business for our cotton end we will not hesitate to go into it.

As stated above we have taken the matter up with the other members of our firm and will communicate with you in the next few days.

If you think that the matter can be arranged on the lines as indicated above, the writer will go to Gastonia at once and perfect such arrangements in writing as will be necessary.

In getting a corporation to make a contract of this nature we would, of course, bind ourselves to furnish such cotton at a fair market price, adding a legitimate profit, but not an excessive one. On the other hand we would open an office at Gastonia and would endeavor to finance all the cotton purchases of all the corporations.

We would be obliged if you would communicate further with us in regard to this matter.

Yours very truly,

Dict. W. C. CRAIG & CO.

172 **TELEGRAM OF FEB. 4, 1901.**

Feby. 4th, 1901.

John F. Love,
Gastonia, N. C.

When do you expect to organize and elect officers for the Loray? Answer.

W. L. WELLS.

TELEGRAM OF FEB. 14, 1900.

Gastonia, N. C., Feb. 14—00.

W. L. Wells,
Vicksburg.

Letter just received. Buy cotton mentioned quick.

JNO. F. LOVE, V. P.

COPY OF LETTER PAGE 697, BOOK NO. 3.

Vicksburg, Miss., Feby. 23rd, 1900.

Mr. John F. Love, V. P.,
Gastonia, N. C.

Dear Sir:

Enclosed please find invoice of 324 bales marked PIK-E, amounting to $14,127.00. Against this invoice we beg to advise our sight draft with B-L attached, for like amount, which please pay on presentation, and oblige.

We bought 250 bales in one lot from a Jew friend of ours to go on this order, but have succeeded in having delivered only 157 bales, leaving about 100 yet to be delivered. We hope to have the balance delivered in the next few days, but owing to the advance in the market and the characteristics of "God's chosen people," we are afraid that we will not succeed in getting all of it. Whatever we get, if any, we will let come along next week.

By the way, what has become of those "town bonds?" Have they ever *ben* printed? We have not seen any of the proceeds, and are

about to starve to death. If there is any trouble about selling
173 them, send them to us, and we will try our hand on them.

Yours very truly,

J. T. W. (Enc.) W. L. WELLS CO.

COPY OF TELEGRAM.

Gastonia, N. C., Sept. 12, 1900.

The W. L. Wells Co.,
Vicksburg.

We are anxious to see Mr. Wells as soon as possible and arrange our business matters when will he be here? Answer.

JOHN F. LOVE, Treasr.

LETTER OF NOV. 21, 1900.

Vicksburg, Miss., Nov. 21st, 1900.

John F. Love, Esq.,
Gastonia, N. C.

Dear Mr. Love :—

Yours of the 19th enclosing N. Y. check for $25,000.00 received, for which accept thanks.

We have about brought our Jew friend around, and there seems now no doubt about our getting the 400 bales. Have secured a beautiful lot for Avon in Greenwood, which will be shipped in a few days. Also a lot of 200 bales from a point in Arkansas for Avon, which we presume we will get. We bought this lot on same basis as the 250 bales, 11c., but the big rise in the market makes us uncertain about it until we have got it. You know you can't risk all cotton buyers. The Greenwood lot is 118 bales and cost 11 1-4 landed, but it is very fine staple. We are working like beavers for you, and think we have done you good service the past ten days. Look out for a jump in the marker, and my advice would be not to sell any goods right now. I believe the market will go a cent higher.

Please reimburse us as fast as possible, as cotton runs into money at an alarming rate, and to be heavily overdrawn naturally makes us timid about buying.

Yours,

W. L. WELLS.

174 **COPY OF LETTER PAGE 288, BOOK NO. 4.**

Vicksburg, Miss., Jan. 2nd, 1901.

Mr. John F. Love, Treas.,
Gastonia, N. C.

Dear Sir:

We have yours of the 31st ult. and have credited your account with the 5c. per cwt. overcharge on the 50 bales MOH, $13.03.

By the way, what about paying for some cotton? Certainly most, if not all, of our shipments since the middle of November have arrived, and we see no reason why we should not be paid according to the understanding. We don't call to mind an instance in our experience where we have worked harder to secure a lot of cotton than we did in these purchases for you, and of course we feel that we are entitled to as prompt a reimbursement as it is possible for you to make.

Yours very truly,

W. L. W. W. L. WELLS CO.

LETTER OF AUG. 12, 1901.

Vicksburg, Miss., Aug. 12th, 1901.

Mr. John F. Love,
Gastonia, N. C.

Dear Sir:—

Herein we beg to hand you statements of accounts of the Gastonia Cotton Mfg. Co. and Avon Mills, with interest at 6 per cent calculated to August 15th, 1901. The interest on all charges has been calculated at thirty days from the date shipments were made, and on all credits from the day the money was received by us.

Please check over these statements in order that they may be verified by you when our Mr. W. L. Wells arrives there the latter part of this week. As you are aware, our firm will be dissolved on September 1st, and it will be necessary to have this matter closed prior to that date.

Yours very truly,

W. L. WELLS CO.

J. T. W.

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SECOND EXCEPTION.

The testimony in the case here closed and the defendant thereupon renewed its motion to dismiss the complaint or for judgement as in case of nonsuit, under the acts of assembly of the State of North Carolina above recited.

The motion was overruled and the defendant then and there, while the jury were still at bar, duly excepted, and prayed that this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

JAS. E. BOYD, [SEAL.]
United States Judge.

THIRD EXCEPTION.

The defendant then moved to dismiss the action, for want of jurisdiction in the court, upon the grounds which were assigned at the close of the plaintiff's testimony, the plaintiff not being a citizen of a State different from that of the defendant.

The motion was overruled and the defendant then and there, while the jury were still at the bar, excepted, and prayed that this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

JAS. E. BOYD, [SEAL.]
United States Judge.

FOURTH EXCEPTION.

The court charged the jury that, upon the evidence in the case, the first issue should be answered "yes," and directed the jury so to answer that issue.

The defendant, in open court, and while the jury were still at the bar, duly excepted to this charge of the court, and prayed that this bill of exceptions might be signed and sealed, and it is signed and sealed, accordingly.

JAS. E. BOYD, [SEAL.]
United States Judge.

FIFTH EXCEPTION.

The court charged the jury that, upon the evidence, the second issue should be answered "yes," and directed the jury so to answer that issue.

176 Defendant, in open court, and while the jury were still at the bar, excepted to this charge of the court, and prayed that this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

JAS. E. BOYD, [SEAL.]
United States Judge.

SIXTH EXCEPTION.

The court charged the jury that, upon the evidence, the third issue should be answered "yes," and that plaintiff was entitled to recover the full amount demanded in the complaint, with interest, and directed the jury to answer the issue accordingly.

The defendant, in open court, and while the jury were still at the bar, excepted to this charge of the court and prayed that this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

JAS. E. BOYD, [SEAL.]
United States Judge.

ALLOWANCE OF BILL OF EXCEPTIONS.

The jury answered the issues, by their verdict, in accordance with the instructions of the court, and the same will be found entered in the record.

The foregoing exceptions were duly taken at the trial of this civil action, and were allowed by the court, all of which was done in open court and while the jury were at the bar, and, inasmuch as the matters aforesaid do not appear by the record of the verdict aforesaid, the defendant, the Gastonia Cotton Manufacturing Company, by its counsel and attorneys, Chas. Price and Amistead Burwell, Platt D. Walker and Edwin T. Cansler, of the said firm of Burwell, Walker & Cansler, prayed that the district judge, presiding at said trial in the Circuit Court, would set his hand and seal to this bill of exceptions, time to present the former bill of exceptions having been extended, by consent of the parties and the order of the court, at the trial, for ninety days from the 20th day of June, 1902, and, thereupon, on this, the 28th day of August, 1902, the said Jas. E. Boyd, district judge, who presided at the trial of the case in the Circuit Court, did set his hand and seal hereto as of the 20th day of June, 1902, the day on which the trial was had and concluded and the exceptions entered, all of which was done in accordance with the statute in such

177 cases made and provided and the course and practice of the court, and this bill of exceptions is ordered to be made a part of the record in this cause.

JAS. E. BOYD, [SEAL.]
United States Judge.

Filed in this office August 28th, 1902.

H. C. COWLES, Clerk.

ASSIGNMENT OF ERRORS.

UNITED STATES OF AMERICA, IN THE CIRCUIT COURT FOR THE FOURTH CIRCUIT, WESTERN DISTRICT OF NORTH CAROLINA—AT LAW.

Gastonia Cotton Manufacturing Company,
Plaintiff in Error,
vs.
W. L. Wells Company,
Defendant in Error.

Afterwards, to-wit, on the 28th day of August, 1902, comes the said Gastonia Cotton Manufacturing Company, the plaintiff in error, by its said attorneys, Chas. Price and Burwell, Walker and Cansler, and says that, in the record and proceedings aforesaid there is manifest error in the following respects, to-wit: In the rulings of the presiding judge during the progress of the trial, and in the refusal to grant the motion submitted by the defendant in the court below, the plaintiff in error in this court, and in the charge or instructions of the court to the jury, and the said plaintiff in error more *practically* alleges as error committed by the court the following:

1. That the court erred in refusing the motion of the defendant in the court below, plaintiff in error in this court, to dismiss the action for the want of jurisdiction in the Circuit Court and for the reasons stated in its first and third bill of exceptions.

The plaintiff in error in due time excepted to the ruling of the court and now assigns the same as error.

2. That the court erred in refusing to grant the motion of the defendant in the court below, the plaintiff in error in this court, to dismiss the complaint, or for judgement as in case of non-suit, under the statute of North Carolina, as set forth in its second bill of exceptions.

178 The plaintiff in error in due time excepted to the said ruling of the court, and now assigns the same as error.

3. That the court refused to grant the motion of the defendant in the court below, the plaintiff in error in this court, to dismiss the motion for want of jurisdiction in the Circuit Court, which motion was made at the close of the testimony in the case and is set forth in the third bill of exceptions.

The plaintiff in error in due time excepted to this ruling of the court, and now assigns the same as error.

4. That the court charged and directed the jury to answer the first issue "yes."

The plaintiff in error in due time excepted to this charge and direction, and now assigns the same as error.

5. That the court charged and directed the jury to answer the second issue "yes."

The plaintiff in error in due time excepted to this charge and direction of the court, and now assigns the same as error.

6. The court charged the jury that, upon the evidence, the third issue should be answered "yes," and that the plaintiff in the court below was entitled to recover the full amount demanded in the complaint and directed the jury to answer the issue accordingly.

The plaintiff in error in due time excepted to this charge and direction of the court, and now assigns the same as error.

Wherefore, the said Gastonia Cotton Manufacturing Company, because of the errors aforesaid, prays that the said judgement of the Circuit Court of the United States may be reviewed, reversed, annulled and altogether held for naught, and that the plaintiff in error may be restored to all things which it has lost by occasion of the said judgement and may have such other and further relief as may be proper in the premises.

This, the 28th day of August, 1902.

CHAS. PRICE,
BURWELL, WALKER & CANSLER,
Attorneys for Plaintiff in Error.

Endorsed:

Filed in my office this, the 28th day of August, 1902.

H. C. COWLES,
Clerk of the United States Circuit Court.

179 **SUPERSEDEAS BOND.**

UNITED STATES OF AMERICA, CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT AND WESTERN DISTRICT OF NORTH CAROLINA—AT CHARLOTTE.

JUNE TERM, 1902.

Gastonia Cotton Manufacturing Company, Plaintiff in Error, *vs.* W. L. Wells Company, Defendant in Error. } At Law.

Know all men by these presents, that we, the Gastonia Cotton Manufacturing Company, as principal, and Jno. F. Love, Geo. A. Gray, R. C. G. Love and Edgar Love, as sureties, are held and firmly bound unto Wells Company in the full and just sum of forty-five thousand dollars, to be paid to W. L. Wells Company, their certain heirs, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, and firmly by these presents.

Sealed with our seals and dated this, the 8th day of August, in the year of our Lord, nineteen hundred and two.

Whereas, lately, at a June term, 1902, of the Circuit Court of the United States for the Western District of North Carolina, in a suit depending in said court between W. L. Wells Company, plaintiffs, and Gastonia Cotton Manufacturing Company, defendant, a judgement was rendered against the said Gastonia Cotton Manufacturing Company for the sum of $39,313.88 and interest on $35,397.00 until paid, and the costs of action, as by said judgement will appear, and the said, the Gastonia Cotton Manufacturing Company, having obtained a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse the judgement in the aforesaid suit, and also a citation directed to W. L. Wells Company, citing and admonishing them to be and appear at the United States Circuit Court of Appeals, for the Fourth Circuit, to be holden at Richmond, in the State of Virginia, on the day in the said citation mentioned; and whereas the penalty of the supersedeas bond to be given by the plaintiff in error, the Gastonia Cotton Manufacturing Company, was fixed by the court at the sum of forty-five thousand dollars, as will appear by the order of the court entered on the record.

Now, the *consideration* of the above obligation is such that, if the said Gastonia Cotton Manufacturing Company shall prosecute the

180 said writ of error to effect, and shall pay said debt to remain in full force and virtue.

GASTONIA COTTON M'F'G CO.,
By GEO. A. GRAY.
GEO. A. GRAY, [SEAL.]
JNO. F. LOVE, [SEAL.]
R. C. G. LOVE, [SEAL.]
EDGAR LOVE, [SEAL.]

[Seal of the Gastonia Manufacturing Co.]

STATE OF NORTH CAROLINA, }
County of Gaston. }

Personally appeared before me, W. T. Rankin, a notary public, duly commissioned and acting in and for the town of Gastonia, county of Gaston, and State aforesaid, Geo. A. Gray, Jno. F. Love, R. C. G. Love, to me known to be the persons whose names appear as sureties on the foregoing bond, and each of them acknowledged the due execution of the said bond by himself, and, being duly sworn, each for himself, says that he is worth the sum of forty-five thousand dollars over and above the exemptions allowed by the laws of the St-te of North Carolina, and over and above all liabilities.

GEO. A. GRAY,
JNO. F. LOVE,
R. C. G. LOVE.

Sworn to and subscribed before me this, the 5th day of August, 1902.

W. T. RANKIN,
Notary Public.

[Notarial Seal.]

STATE OF NORTH CAROLINA, }
County of Gaston. }

Personally appeared before me, W. T. Rankin, a notary public, duly commissioned and acting in and for the town of Gastonia, county of Gaston and State aforesaid, Edgar Love, to me known to be one of the persons whose names appear on the foregoing bond, and acknowledged the due execution of the said bond by himself, and, being duly sworn, says that he is worth the sum of twenty

181 thousand dollars over and above the exemptions allowed by the laws of the State of North Carolina, and over and above all liabilities.

EDGAR LOVE.

Sworn to and subscribed before me this, the 5th day of August, 1902.

W. T. RANKIN,
Notary Public.

[Notarial Seal.]

We consent, as counsel of record for the defendant in error, W. L. Wells Company, that the foregoing supersedeas bond may be filed at any time before the writ of error and citation are allowed and issued, with the same effect as if the said writ of error and citation had been allowed and issued at the time the supersedeas bond was filed.

JONES & TILLETT,
Attorneys for W. L. Wells Co., Defendant in Error.

UNITED STATES CIRCUIT COURT,
Western District of North Carolina.

The foregoing supersedeas bond having been presented to me, and the same appearing sufficient in all respects, I, therefore, approve the same and direct that the said bond be filed and operate as a supersedeas bond in the case of the Gastonia Cotton Manufacturing Company, plaintiff in error, *vs.* W. L. Wells Company, defendant in error.

This, the 28th day of August, 1902.

JAS. E. BOYD,
United States Judge.

Endorsed:

Filed in my office this 28th day of August, 1902.

H. C. COWLES,
Clerk United States Circuit Court.

182 **BOND FOR COSTS.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Gastonia Cotton Manufacturing Company Plaintiff in Error. *versus* W. L. Wells Company, Defendant in Error.	June Term, 1902, At Charlotte, N. C.

Know All Men by These Presents, that we, Gastonia Cotton Manufacturing Company, a corporation duly created and organized, as principal, and Geo. A. Gray and Jno. F. Love, as sureties, are held and firmly bound unto W. L. Wells Company in the full and just sum of three hundred dollars, to be paid to the said W. L. Wells Company, and Geo. A. Gray and Jno. F. Love, as sureties, are held and firmly bound unto W. L. Wells Company in the full aus just sum of three hundred dollars, to be paid to the said W. L. Wells Company, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this, the 5th day of August, in the year of our Lord, one thousand, nine hundred and two.

Whereas, lately, at a Circuit Court of the United States for the Western District of North Carolina, held at Charlotte, North Carolina, in a suit, depending in said court between W. L. Wells Company, plaintiff, and the Gastonia Cotton Manufacturing Company, defendant, a judgement was rendered against the said Gastonia Cotton Manufacturing Company; and, whereas the said Gastonia Cotton Manufacturing Company has obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgement in the aforesaid suit or civil action, and a citation has been directed to the said W. L. Wells Company, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond, Virginia, on the day named in said citation;

Now, the condition of the above obligation is such that, if the Gadtonia Cotton Manufacturing Company shall prosecute said writ of error to effect and answer and pay all costs if its fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

GASTONIA COTTON M'F'G CO.
By GEO. A. GRAY, President,
GEO. A. GRAY, [Seal.]
JNO. F. LOVE, [Seal.]

[Seal of the Gastonia Manufacturing Company.]

183 STATE OF NORTH CAROLINA, }
County of Gaston. }

Personally appeared before me, W. T. Rankin, a notary public, duly commissioned and acting in and for the town of Gastonia, county of Gaston and State aforesaid, Geo. A. Gray and Jno. F. Love, to me known to be the persons whose names appear as sureties on the foregoing bond, and each of them acknowledged the due execution of the said bond by himself, and, being duly sworn, each for himself, says that he is worth the sum of three hundred dollars over and above the exeemptions allowed by the laws of the State of North Carolina and over and above all liabilities.

GEO. A. GRAY,
JNO. F. LOVE.

Sworn to and subscribed before me this the 5th day of August, 1902.

[Notarial Seal.]

W. T. RANKIN,
Notary Public.

We consent, as counsel of record for the defendant in error, W. L. Wells Company, that the foregoing cost bond may be filed at any time before the writ of error and citation are allowed and issued, with the same effect as if the said writ of error and citation had been allowed and issued at the time the cost bond was filed.

JONES & TILLETT,
Attorneys for W. L. Wells Company,
Defendant in Error.

UNITED STATES CIRCUIT COURT, WESTERN DISTRICT OF NORTH CAROLINA.

The foregoing cost bond having been presented to me, and the same appearing sufficient in all respects, I, therefore, approve the same and direct that it be filed as the cost bond in this case.

This, the 28th day of August, 1902.

JAS. E. BOYD,
United States Judge.

Endorsed:

Filed in *k*y office, this, the 28 day of August, 1902.

H. C. COWLES,
Clerk United States Circuit Court.

184 **OPINION OF THE COURT.**

The W. L. Wells Company
vs.
The Avon Mills and The Gastonia Cotton Manufacturing Company.
} Opinion.

There are two cases pending for trial, the one The W. L. Wells Company vs. The Avon Mills, and the other the same plaintiff against the Gastonia Cotton Manufacturing Company. The matters involved are substantially the same in both cases, and, by consent of all parties, the two cases are consolidated for trial. The fact is undisputed that the defendants dealt with the plaintiff as a corporation under its corporate name, and bought cotton which was delivered to defendants by plaintiff at an agreed price, and that the amount claimed by plaintiff for the purchase of the cotton is correct. The defendants then set up two defenses against plaintiff's recovery, the first as to the jurisdiction of the court, and the second an alleged payment of $50,000.00 on plaintiff's debt. In the first place, the defendants deny that the plaintiff is a corporation under the laws of the State of Mississippi, and is, therefore, not a citizen of said State, and cannot maintain its action in this court. This defense is based upon the allegation that plaintiff was not duly organized under its charter, and was not in fact a corporation at the time of its dealings with defendants and at the bringing of the suits; and it is contended by defendants that if this be true, the plaintiff did not have a legal existence as a corporation in the State of Mississippi, was not a citizen of said State, and, consequently, there was no diverse citizenship, and this court has no jurisdiction of the cause of action. The evidence upon this point is uncontradicted, and consists of a charter duly issued under the laws of the State of Mississippi creating a corporation to be called The W. L. Wells Company, in which W. L. Wells, John T. Wells and George Butterworth are named as corporators, authorizing the organization of said corporation with a capital stock of $50,000, the purpose of the corporation being to deal in cotton, to begin business as such dealer when the sum of ten thousand dollars of the capital stock was paid in. Under the authority of this act of incorporation the corporators met, organized and elected W. L. Wells president of the company, and one of the other corporators as secretary & treasurer. Thereupon a charter or certificate of incorporation was duly issued to the said company by the proper authorities of Mississippi, and the company commenced business. The ten thousand dollars of capital stock was not paid in at first, but

185 the undisputed testimony is that the net profits of the company for the first year of its business was $37,000, and from this amount the required ten thousand dollars of capital stock was paid in. The dealings of defendants with the plaintiff commenced soon after the corporation was organized, but the account between them for the first year has all been settled up, and the account upon which this controversy arises is based on transactions subsequent to the first year of plaintiff's existence as a corporation, and after the ten thousand dollars of capital stock had been paid in, so that plaintiffs had not only organized as a corporation under the provisions of law, but, according to the evidence, the ten thousand dollars of capital stock had been paid anterior to the time the cause of action in this case arose. All of the transactions which the defendants had with the plaintiff were in its corporate capacity as the W. L. Wells Company. Every letter of plaintiff to defendants, and there are a great many of them, concerning the sale and delivery of the cotton for which the plaintiff sues, is upon paper headed "The W. L. Wells Company, Incorporated," and the defendants, in answer to these letters, and in making orders for cotton to be shipped to the mills, in every instance addressed "The W. L. Wells Company." The bills of lading for cotton shipped defendants were made out in the name of the W. L. Wells Company, and the checks sent by defendants in making payments were all payable to the said company.

The first question, and that is the question which affects the jurisdiction, is this: Is the W. L. Wells Company a corporation of the State of Mississippi, and thus entitled to maintain its action against the defendants, who are citizens of North Carolina, in the Circuit Court of the United States? It is the opinion of the court that the evidence is conclusive upon this point. It is true that at the time the corporators perfected the organization of the corporation the ten thousand dollars of capital stock required to be paid before the corporation could engage in business was not paid, but, although this be true, when the company was organized and its officers elected under the provisions of the act of legislature, the company assumed a legal existence. The persons named in the charter had exercised the franchise of the corporators; that is, the right to organize and exist as a legal entity. There yet remained to the company the right to exercise the franchise of the corporation, which was the right to buy and sell cotton in pursuance of the purposes for which the corporation had been created. In this charter, as in many others, there are two separate and distinct franchises; the one is the franchise of the corporators named in the act, which is the power conferred upon them to organize and become a body politic; the other

186 is the franchise of the corporation; that is, the right of the corporation, when it has been organized, to proceed to business. The body becomes a corporation when the individual corporators have exercised the first right; that is, to organize under the provisions of the charter, and when this is done, in the opinion of the court, the corporation has a legal existence such as to render it capable of suing and being sued. If, however, this doctrine is not sound, it is a fact that before the transactions which are the ground of this claim were begun with the defendants in this case, the corporation known as the W. L. Wells Company had not only organized under the provisions of the law, but had actually paid in the ten thousand dollars of capital stock which authorized it to proceed to do business, for the testimony of John T. Wells is undisputed either by facts or circumstances, that the ten thousand dollars of capital stock was paid in from the first year's profits. Further than this, even if the requirements of the charter have not been complied with to the extent necessary to constitute a corporation under the laws of Mississippi, yet it is an uncontroverted fact that W. L. Wells, John T. Wells and George Butterworth are all citizens and residents of the State of Mississippi, were so at the time of dealings with defendants and at the time of the bringing of this suit, and still are citizens of said State, and defendants are citizens of North Carolina. Can it be, therefore, that, upon a mere technical question of corporation or no corporation, these parties, who have bought and delivered cotton to defendants upon defendants' order, at prices which are not disputed by the defendants, are to have their suit dismissed from court; to be ousted of their remedy to recover from defendants a debt, part of which is at least admitted now to be due. The court cannot coincide with this view, but, on the other hand, is of the opinion that plaintiff is a corporation, and is entitled to maintain its action, and the jury is instructed to find the issue as to jurisdiction in favor of the plaintiff. On this point the court does not deem it necessary to discuss the question that plaintiff was exercising corporate franchises with the knowledge and *consent* of the State of Mississippi. *Tulare Irrigation Dis't.* vs. *Shepard*, 185 U. S.

The defendants next allege a payment of fifty thousand dollars upon plaintiff's claim, the basis of payment being money paid by John F. Love, as secretary and treasurer of the two defendants, to a corporation known as the Loray Mills, for stock to that amount in said corporation. The evidence to support this payment is substantially that W. L. Wells agreed to take fifty thousand dollars of stock in the Loray Company, as shown by a letter written by him to Jno. F. Love on October 4th, 1900. In this letter Wells stated that he had arranged to take fifty thousand dollars of the Loray stock, but

187 asked to let it come in on the last payments. In the same letter Wells wrote Love in substance to keep the Loray subscription a secret from his Wells', associates, and to mark letters to him concerning it "personal." This injunction was observed by Love, according to the testimony. W. L. Wells and Love had had some conversation about the former taking stock in this company before, but nothing definite had been said until this letter was written. Love at one time, so he testified, had taken ten thousand dollars of money due the W. L. Wells Company for cotton and applied it as a payment upon the Loray stock, and at another time took forty thousand dollars of money due the W. L. Wells Company for cotton and applied it in the same way, but there was no evidence whatever that these alleged applications of money were made by authority or consent of the W. L. Wells Company, or that the said company ever ratified said payments. Neither was there any evidence that W. L. Wells was authorized by the company to subscribe for stock in the Loray Company when he agreed to take the stock, or that the Company at any time ratified any subscription for stock in the Loray Company made by the said W. L. Wells. Love did not give notice to the company that he had taken any money due it and applied it for payment for stock in the Loray Mills, and it was not until the W. L. Wells Company had called upon the defendants for a settlement of the amount due for cotton and for which this suit is brought, that Love, as agent for the defendants, or in any other manner, made known to the W. L. Wells Company that the alleged payment of fifty thousand dollars was claimed.

In the last defense set up by the defendants; that is, the alleged payment of fifty thousand dollars claimed as a credit upon plaintiff's debt, three principles of law are involved: First, that defendants, having dealt with plaintiffs as a corporation, are estopped to deny its corporate existence in order to prevent a recovery for the price of cotton sold and delivered. This principle is so well settled that no citation of authority in support seems to be necessary, but attention is called to *Chubb* vs. *Upton*, 95 U. S., 665, & *Balto. & Potomac R. R. Co.* vs. *First Baptist Church*, 137 U. S., 568. Second, W. L. Wells, being the agent of the plaintiff corporation, for the purpose of carrying on its business as a dealer in cotton, was not authorized to subscribe for stock in an incorporated company for his principal, and the principal would not be bound by any contract the said agent would make in this behalf, unless express authority is shown, or there is evidence that such contract was afterwards ratified by the principal; nor was it within the scope of the agent's authority to direct the application of money due his principal in payment for stock in the Loray Company, and if defendants thus applied money due plaintiff, without the consent of the plaintiff, it was authorized,

188 and such application cannot avail defendants against plaintiff's recovery in this action, unless the defendants introduce testimony which satisfies the jury that the plaintiff afterwards ratified the transaction.

As before stated, the negotiations in regard to the subscription for stock in the Loray Company were had between W. L. Wells and Love. There is no evidence that these negotiations were ever brought to the knowledge of the plaintiff, nor to John T. Wells and George Butterworth, the other incorporators, nor is it shown that the plaintiff, in its corporate capacity, or that the associates of W. L. Wells had any knowledge whatever of the application of money due for cotton in payment for stock in the Loray Company; nor is there any evidence that the plaintiff corporation or W. L. Wells' associates, by any subsequent act, ratified the subscription for stock or the application of funds in payment therefor.

Shutz vs. *Jordan*, 141 U. S., 213.
Owings vs. *Hull*, 9 Peters (9 Law Ed.), 627.
Baldwin vs. *Burroughs*, 47 N. Y., 211.
Starr & Co. vs. *Galgate Ship Co.*, 68 Fed. Rep., 243.

From the evidence in this case, the conclusion is irresistible that the defendants were put upon notice that the contract which they allege for the Loray stock was a contract for the benefit of W. L. Wells, individually, and, being thus put upon notice of this fact, they were bound to inquire into the authority of W. L. Wells, no matter how general his powers might have been, as it is a rule of universal application that no agent, however general his authority, can apply his principal's property to the payment of his individual debts without the special authority of his principal; and it is a further rule of law that he who assumes to rely upon the authority of an agent to bind his principal to the discharge of his own obligations must prove actual authority if a contention arises.

Christy vs. *Foster*, 61 Fed. Rep., 551.
Park Hotel Company vs. *Bank*, 86 Fed. Rep., 742 (C. C. A.).

Third. The defendants having admitted the purchase of the cotton, and its delivery at an agreed price, the burden is then upon them to prove, by a preponderance of testimony, a payment which is alleged by them and denied by the plaintiff. Upon consideration of all the testimony in this case, the court is of the opinion that there is no evidence reasonably sufficient to go to the jury to sustain defendant's alleged payment. Wells was not authorized to subscribe for stock for the plaintiff in the Loray Mills, or any other corporation, nor was the money paid by Love for the stock applied with the knowledge or assent of the plaintiff, or such application after-

189 wards ratified by it. W. L. Wells had no power to bind his company upon any such contract, either as to the subscription for the stock or as to the payment of the money from the amount due for cotton. At the time the money of the plaintiff was taken by Love and applied, as he states, in payment for stock in the Loray corporation, the said corporation had not been organized, nor was it organized for months afterwards, and when the organization took place no representative of the plaintiff company was present, and there is no evidence that the plaintiff had notice of the meeting at which the organization was perfected; indeed, the evidence shows that W. L. Wells himself had no notice of the meeting at which the organization was effected, and was not present either in person or by proxy. In the mean time, the capital stock of the Loray Company, which was one million dollars, was changed, and, instead of one million dollars of stock, all of the same character, seven hundred thousand dollars of preferred stock was issued to certain stockholders, and three hundred thousand dollars of common stock remained, and of the three hundred thousand dollars of common stock it was proposed to issue fifty thousand dollars to the W. L. Wells Company as a payment on its debt for cotton. In other words, after seven hundred thousand dollars of stock in the Loray Mills had been preferred and given priority in lien upon the property and for the dividends of the Company, the proposition was to issue fifty thousand dollars of the common stock, which, so far as the evidence shows, was without market value, as a credit upon a valid debt due W. L. Wells Company for cotton which had been sold and delivered to the defendants, and had been consumed by them in their operations. The jury is, therefere, instructed to find the other issues submitted to them in favor of the plaintiff.

Endorsement: Filed in this office Sept. 13, 1902.

H. C. COWLES, Clerk.

190 PETITION FOR WRIT OF ERROR.

UNITED STATES OF AMERICA:

IN THE CIRCUIT COURT FOR THE FOURTH CIRCUIT, WESTERN DISTRICT OF NORTH CAROLINA.

Gastonia Cotton Manufacturing Company, Plaintiff in Error,
vs.
W. L. Wells Company, Defendant in Error.
} At Law.

To the Honorable Judges of the said Court:

And now comes the above-named plaintiff in error, the Gastonia Cotton Manufacturing Company, who, considering itself aggrieved by a judgment entered against it in this action on the day of June, 1902, hereby prays that a writ of error may issue to the Circuit Court of the United States for the Western District of North Carolina, in order that the said judgment and the action of the court in its rulings and in the instructions given by it to the jury, which were in fact given by the said court, and all of which rulings and instructions were separately and duly objected to by the said plaintiff in error, and all other errors committed by the said court to the prejudice of the plaintiff in error, which appear in the Bill of Exceptions and Assignment of Error, may be reviewed and reversed by the United States Circuit Court of Appeals for the Fourth Circuit, and the said plaintiff in error files herewith an assignment of error, setting out separately and particularly each error asserted or intended to be argued and relied on in said Circuit Court of Appeals by the plaintiff in error.

And the said plaintiff in error offers herewith good and sufficient security that it will prosecute the said writ of error to effect, and, if it fails to make its plea good, it will pay the damages and costs as conditioned in its said bond.

Wherefore, the said plaintiff in error prays that a writ of error may be allowed and issued in this behalf for the correction of the error complained of, and that a transcript of the record, proceedings and papers in said cause, upon which the said final judgment was made, together with the bill of exceptions and assignment of error and all other papers and proceedings may be sent up, duly authenticated, to the United States Circuit Court of Appeals for the Fourth Circuit.

GASTONIA COTTON MANUFACTURING COMPANY,
By CHARLES PRICE and BURWELL, WALKER & CANSLER,
Attorneys and Counsel.

191 Writ of error allowed this 28th day of August, 1902.

JAS. E. BOYD,
United States Judge.

Endorsed as follows: Filed in this office the 28th day of August, 1902.

H. C. COWLES, Clerk.

ORDER GRANTING WRIT OF ERROR.

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT AND WESTERN DISTRICT OF NORTH CAROLINA—AT CHARLOTTE.
JUNE TERM, 1902.

Gastonia Cotton Manufacturing Company, Plaintiff in Error,
vs.
Wells Company, Defendant in Error.
} At Law.

On this, the 28th day of August, 1902, came the plaintiff in error, by its attorneys, and filed herein and presented to the court its petition, praying for the allowance of the writ of error intend*ing* to be urged by it, and praying also that a transcript of the records, proceedings and papers upon which the judgment herein was rendered and the other papers and proceedings in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals of the Fourth Judicial Circuit, and that such other and further proceedings be had as may be proper in the premises.

In consideration whereof, the court doth allow the writ of error, the plaintiff in error having given a good and sufficient bond according to the statute in such cases made and provided, and the rule of the said court, in the sum of forty-five thousand dollars, which shall operate as a *supersedeas* bond in this case and shall stay the execution of the judgment until otherwise provided.

This, the 28th day of August, 1902.

JAS. E. BOYD,
United States Judge.

192 Endorsed: Filed in my office the 28th day of August, 1902.

H. C. COWLES,
Clerk of the United States Circuit Court.

WRIT OF ERROR.

UNITED STATES OF AMERICA, } ss:

The President of the United States to the Honorable Judges of the Circuit Court of the United States for the Western District of North Carolina—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Wells Company, plaintiffs, and the Gastonia Cotton Manufacturing Company, defendant, a manifest error has happened, to the great damage of the said Gastonia Manufacturing Company, as by its complaint appears. We, being willing that error, if any hath been, should be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Fourth Circuit, together with this writ, so that you have the same at Richmond, on the 26th day of September next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

{ Seal of the Court. } Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 28th day of August, in the year of our Lord one thousand nine hundred and two.

H. C. COWLES,
Clerk of the Circuit Court of the United States,
Western District of North Carolina.

Allowed by—
JAS. E. BOYD, U. S. Judge.

Due service of the within writ of error was made on the 28th day

193 of August, 1902, by the filing of a true copy thereof in the office of the Clerk of the Circuit Court of the United States for the Western District of North Carolina, at Charlotte, N. C., on that day, and service of the same is also accepted by the attorneys of record for defendants in error, Wells Company, in the following words and figures, which are endorsed on the writ:

Endorsed: Service of the within writ of error in the case of Gastonia Cotton Manufacturing Company, plaintiff in error, and Wells Company, defendants in error, is this day accepted by the undersigned, attorneys and counsel of record of the said Wells Company, and further service of said writ of error is hereby waived.

This, the 28th day of August, 1902.

JONES & TILLETT,
Attorneys and Counsel for Defendants in Error.

Endorsed: Filed in this office 28th day of Aug., 1902.

H. C. COWLES,
Clerk United States Circuit Court for the
Western District of North Carolina.

CITATION.

UNITED STATES OF AMERICA, } ss:

The President of the United States, to Wells Company—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond, Virginia, on the 26th day of September, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court *for* the United States for the Western District of North Carolina, wherein Gastonia Cotton Manufacturing Company *id* plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

{ Seal of the Court. } Witness, the Honorable James E. Boyd, Judge of the Circuit Court of the United States, this 28th day of August, 1902, in the year of our Lord one thousand nine hundred and two.

JAS. E. BOYD,
U. S. Judge Presiding.

194 Endorsed: Service of the within citation in the case of Gastonia Cotton Manufacturing Company, plaintiff in error, and Wells Company, defendants in error, is this day accepted by the undersigned, attorneys and counsel of record of the said Wells Company, and further service of said citation is hereby waived.

This, the 28th day of August, 1902.

JONES & TILLETT,
Attorneys and Counsel for Defendants in Error.

Endorsed: Filed in this office 28th day of Aug., 1902.

H. C. COWLES,
Clerk United States Circuit Court for the
Western District of North Carolina.

ORDER ENLARGING TIME FOR FILING RECORD.

UNITED STATES OF AMERICA:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Gastonia Cotton Manufacturing Company,
Plaintiff in Error,
vs.
Wells Company, Defendants in Error.

In the above-entitled case, for good and sufficient cause shown to me, the Circuit Judge who presided at the trial of the said cause, and who signed the citation herein, I do hereby enlarge the time for docketing the case and filing the record thereof with the Clerk of the Circuit Court of Appeals at until the 1st day of October, A. D. 1902.

This order is made under Rule 16 of the said Circuit Court of Appeals for the *Fourt* Circuit.

This 28th day of August, 1902.

JAS. E. BOYD,
United States Judge.

195

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE UNITED STATES, WESTERN DISTRICT OF NORTH CAROLINA, FOURTH CIRCUIT, AT CHARLOTTE, N. C.

I, H. C. Cowles, Clerk of the Circuit Court of the United States for the Western District of North Carolina, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of W. L. Wells Company against the Gastonia Cotton Manufacturing Company, as *the* fully the same remain on file and of record in my office.

{Seal of the Court.}

In testimony whereof, I hereunto set my hand and affix the seal of the said court at office in the city of Charlotte, in said district, this 23d day of September, A. D. 1902.

H. C. COWLES,
Clerk of Said Circuit Court.

196 NORTH CAROLINA, Mecklenburg County.

W. L. Wells Company, Petitioner, *vs.* Gastonia Cotton Manufacturing Company. } No. 237. Oct. Term, 1904.

Whereas, the original record has various exhibits to the depositions of witnesses John T. Wells, and John F. Love, which do not appear on the page- of the record but are printed in the original record, as exhibits to their respective depositions, without giving the page of the record where the exhibits would be found, and whereas it has been found by experience of counsel on both sides that this is confusing, and whereas both sides desire to correct this as far as possible;

Now therefore, it is agreed that the Clerk of the Supreme Court may print the record hereto attached which contains references to the pages upon which the said exhibits appear, and the same shall be deemed the record in the Supreme Court of the United States on the argument of this cause.

C. W. TILLETT,
MURRAY F. SMITH,
J. HIRSH,
Attorneys for Petitioner.
CHAS. PRICE,
Attorney for Respondent.

196½ [Endorsed:] File No. 19312 Supreme Court U. S. October term, 1904 Term No. 237 W. L. Wells Company petitioner *vs.* Gastonia Cotton Manufacturing Co. Stipulation to correct record Filed Sept. 10, 1904

197 **PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.**

No. 469.

Gastonia Cotton Manufacturing Company, Plaintiff in Error, *vs.* W. L. Wells Company, Defendant in Error. } In Error to the Circuit Court of the United States for the Western District of North Carolina, at Charlotte.

Sept. 24, 1902, the transcript of record is filed and the cause is docketed.

Same day, appearance of Burwell, Walker & Cansler and Charles Price for the plaintiff in error, order filed.

Octo. 6, 1902, twenty copies of the printed record is filed.

Octo. 9, 1902, appearance of Jones & Tillett and Murray F. Smith for the defendant in error, order filed.

AGREEMENT AS TO FILING BRIEFS.

Filed Octo. 24, 1902.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE FOURTH CIRCUIT. AT RICHMOND, VA.

Gastonia Cotton Manufacturing Company, Plaintiff in Error,
vs.
W. L. Wells Company, Defendant in Error.

In the above entitled case, it is agreed and stipulated by and between the counsel for the plaintiff in error and the counsel for the defendant in error, that the counsel for the plaintiff in error shall have until and including Monday the 3rd day of November, 1902, to file printed brief under the rule of said court, and the counsel for the defendant in error shall have until and including Thursday, the 13th day of November, 1902, to file printed brief in reply, and
198 this stipulation shall be filed in the case.

This the 20th day of October, 1902.

BURWELL, WALKER & CANSLER,
Attorneys for Plaintiff in Error.
JONES & TILLETT,
Attorneys for the defendant in error.

On another day, to-wit, Nov. 17, 1902, (November Term, 1902) the cause came on to be heard before Judges Goff, Brawley and Purnell, and is argued by counsel, and submitted.

ORDER FOR RE-ARGUMENT.

Filed Nov. 6, 1903.

Gastonia Cotton Manufacturing Co.,
vs.
W. L. Wells Company.
No. 469.

Ordered, that this case be replaced on the docket for re-argument of the same to be had. The case will be placed at the foot of the docket and be called during the present term of the court. The clerk will advise counsel accordingly.

N. GOFF,
Senior Circuit Judge.

And on another day, to-wit: Nov. 23, 1903, (same term) the cause came on again to be heard and re-argued by counsel before Judges Goff, Simonton and McDowell, and submitted.

Afterwards, to-wit: February 2, 1904, (February term, 1904,) the court announced and filed its opinion, which is as follows, to-wit:

199 **UNITED STATES CIRCUIT COURT OF APPEALS,**

FOURTH CIRCUIT.

No. 469.

Gastonia Cotton Manufacturing Company, Plaintiff in Error, *versus* W. L. Wells Company, Defendant in Error.	In Error to the Circuit Court of the United States for the Western District of North Carolina, at Charlotte, N. C.

[Argued Nov. 23, 1903. Decided Feb. 2, 1904.]

Before GOFF and SIMONTON, Circuit Judges, and McDOWELL, District Judge.

CHARLES PRICE and ARMISTEAD BURWELL for plaintiff in error, and MURRAY F. SMITH and CHARLES W. TILLETT, for defendant in error.

SIMONTON, Circuit Judge:

This case comes up by writ of error to the Circuit Court of the United States for the Western District of North Carolina. The action was brought in the court below in the name of the W. L. Wells Company against the Gastonia Cotton Manufacturing Company on a money demand for $35,967.60. The complaint, in its first paragraph, setting out the jurisdiction of the court, alleges that the plaintiff is a corporation created and duly organized under the laws of the State of Mississippi, and is a citizen and resident of the
200 State of Mississippi; and the defendant is a corporation under the laws of North Carolina. The defendant, in the first paragraph of its answer, admits its own corporate character under the laws of North Carolina, but adds: "It has no knowledge or information sufficient to found a belief as to the truth of the allegation contained in the first section of the complaint, to-wit: that the plaintiff is a corporation organized under the laws of the State of Mississippi, and a citizen and resident of that State, and, therefore, it denies the said allegation." This is strictly in accordance with code pleading and practice which prevails in North Carolina. Under this system of pleading there are two modes of defence to a

complaint, demurrer and answer. So this defence set up here, which ordinarily would be made by plea in abatement, is properly made in the answer. (Code of Procedure of North Carolina, Section 240.) So when the case was heard before the jury, the court below in formulating the issues put as the first two, these:

"1st. Is plaintiff a corporation as alleged in the complaint.

"2nd. Is plaintiff a citizen of the State of Mississippi."

These issues are practically one and the same. Having formulated the issues, the court directed the jury to find them in the affirmative. The issues presented, as will be seen hereafter, were both issues of law.

The jury having found for the plaintiff on all the issues under instructions, a writ of error was allowed, and the case is here on assignments of error. The first five go to the instructions of the court on the first and second issues.

The burden of proof on these issues being on the plaintiff below, these facts appeared:

W. L. Wells was dealing in cotton in the State of Mississippi, and conducted a large business, among others with the defendants below. In 1898 a charter was applied for by him, John T. Wells and George Butterworth, for an incorporation under the name of the W. L. Wells Company. Charters in Mississippi are granted under general laws.

An application is made to the Governor for a charter. He
201 refers the proposed charter to the Attorney General, and upon his certificate that it is not violative of the Constitution and laws of Mississippi, the Governor approves it and causes the Great Seal to be affixed to it. In the present case the following form of charter was submitted to the Governor of Mississippi, and by him referred to the Attorney General 26th April, 1898.

"Section 1. Be it known and remembered that W. L. Wells, John T. Wells and George Butterworth, their associates and assigns, are hereby created a body politic and corporate, under the name and style of W. L. Wells Company, and by that name shall have succession for fifty years, shall have power to sue and be sued, contract, and be contracted with, may have a corporate seal, and break and alter the same at pleasure.

"Section 2. The capital stock of said corporation shall be fifty thousand dollars, divided into shares of five hundred dollars each, and as soon as ten thousand dollars of said stock is subscribed and paid for, said corporation shall have power to commence business.

"Section 3. Said corporation is formed for the purpose of conducting a general cotton business, and may buy and sell cotton, and may transact a cotton factorage business, may advance money or supplies for the purpose of controlling shipments of cotton, may take and receive mortgages or deeds of trust upon property to secure said advances, and, generally, may have all powers conferred by Chapter 25 of the Annotated Code of 1892, necessary and requisite to carry out the purpose of said corporation.

"Section 4. The board of directors of said corporation shall con-

sist of three persons, whose numbers may be increased at any time by a majority vote of the stockholders, and said directors shall have power to elect all necessary officers, and prescribe the duties, salaries and tenure of such officers.

"The foregoing proposed charter of incorporation is respectfully referred to the Honorable Attorney General for his advice as to the constitutionality and legality of the provisions thereof.

"A. J. McLAURIN, Governor.

"Jackson, Miss., April 26th, 1898.

202 "The provisions of the foregoing proposed charter of incorporation are not violative of the Constitution or laws of the State.

"WILEY N. NASH,
"Attorney General.

"Jackson, Miss., April , 1898.

"Executive office, (State Coat of Arms), Jackson, Mississippi.

"The within and foregoing charter of incorporation of the W. L. Wells Company is hereby approved.

{ Great Seal of the State of Mississippi. } "In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed this 1st day of June, 1898.

"By the Governor: A. J. McLAURIN.

"J. L. POWER,
"Secretary of State.

"Office of Secretary of State, Jackson, Mississippi.

"I, J. L. Power, Secretary of State. do certify that the charter hereto attached, incorporating the W. L. Wells Company, was, pursuant to the provisions of chapter 25 of the Annotated Code, 1892, recorded in the book of Incorporations in this office.

{ Great Seal of the State of Mississippi. } "Given under my hand the Great Seal of Mississippi hereunto affixed this 1st day of June, 1898.

"J. L. POWER,
"Secretary of State."

The Attorney General gave his certificate in favor of the constitutionality of the proposed charter on day of April, 1898. And on 1st day of June, 1898, the Governor caused the Great Seal of the

State to be put to the charter. The act under which the Governor approved this charter declares: "The powers therein specified shall by the approval of the charter be vested in such corporation
203 and it shall go into operation at the time and on the terms and conditions specified."

It will be noted that the second section of this charter fixed the terms and mode in which it would get life, could act as a corporation. "The capital stock of said corporation shall be $50,000, divided into shares of $500, each, and as soon as $10,000 of said stock is subscribed and paid for, said corporation shall have power to do business."

The Governor having sealed the charter, the incorporators met on 18 July, 1898, read over and adopted it. Books of subscription were then opened and W. L. Wells subscribed for ten shares, John T. Wells for five shares and George Butterworth for five shares. On the same day and at the same place a stockholders' meeting was held, and W. L. Wells, John T. Wells and George Butterworth were elected directors. The meeting thereupon adjourned and the record does not disclose whether they met again or not. John T. Wells, who was secretary and treasurer of the company, says that when the stock was subscribed for nothing was paid; that he paid for the stock out of the profits of the first year, so did Butterworth and so did W. L. Wells. Yet he says that these profits were never divided, no dividend was ever declared, no money carried to credit of any stockholder, no stock certificates ever issued. He goes on to say that he never paid any cash into the Wells Company, nor did Butterworth, nor did W. L. Wells, and that there was absolutely no capital to start with. That, notwithstanding, he drew out $10,217.55, and Butterworth took $9,022.65. Both he and Butterworth being men of small means, having no property liable for their debts. It is very clear from this that having a charter like this conditioned upon the payment of $10,000 in subscriptions, then these men undertook to exercise powers in the charter, without fulfilling or attempting to fulfill the conditions precedent in the charter. That even when they had made money in the business they ignored the corporation altogether, and drew the money out of the business as if it belonged to them and not to the corporation. The charter never went into operation, and the corporation never became a legal entity. More than this, these assumed co-porators went on in business, contracted obligations in the name of the so-called corporation which did not possess a dollar of property, or have any mode of meeting a
204 debt, thus seeking to cloak their transactions under an assumed corporate name, and avoid in this way all personal responsibility. At the same time two of them were, in a business sense, irresponsible. It would seem that this transaction was an abuse of, and in fraud of, the law. And that Wells Company had never and could not have any legal existence. When a corporation is formed under an enabling act, all the mandatory provisions of the statute must be complied with. In Beach on Private Corporations,

Section 12 (p. 18) we find: "There is a broad and obvious distinction between such acts as are declared to be necessary steps in the process of incorporation, and such as are required of the individuals seeking to become incorporated, but which are not made requisite to the assumption of corporate powers. In respect to the former, any material omissions will be fatal to the existence of the corporation, and may be taken advantage of collaterally in any form in which the fact of incorporation can properly be called in question." The same learned author, at p. 27, says: "It is immaterial that the persons attempting incorporation have acted in good faith, and have actually carried on business under their supposed authority to act as a body corporate." This seems to be in accordance with the law in Mississippi. In *Perkins* vs. *Sanders*, 56 Miss., 733, the Supreme Court of that State says: "In charters which are mere propositions for the organization of a corporation, and which require certain acts to be performed precedent to the existence of the corporation, no corporation can exist, and, of course, no corporate act can be performed till these conditions have been complied with. In all such cases when a certain amount is named in the charter as necessary to be subscribed as the capital stock" (in the case at bar it must be subscribed and paid in) "such subscription" (and of course such payment) "is regarded as *as* condition precedent to the existence of the corporation, unless otherwise provided in the charter." Discussing the broad distinction between a charter which creates a corporation, and invests it at once with corporate powers, and that class of corporations created under general laws requiring an application for a charter, the same court says: "The distinction between the two classes of charters is thus seen to be that in the first class the charter is a mere provision on the part of the legislature for the formation of a
205 corporation upon the doing of certain acts prescribed in the charter as precedent conditions, and as a necessary result no corporate act can be done until these conditions have been performed, except such as may be expressly permitted by the charter, and to those acts it would be considered that the corporation had existence before its full investure with its corporate franchise."

It is contended, however, that the plaintiff, if it be not a corporation *de jure* is a corporation *de facto*, and will be so recognized. That, at least, the defendants having dealt with it as a corporation, are now estopped from denying its existence as a corporation. It must be borne in mind that the question we are now considering is not the relative rights of the plaintiff in error and of the defendant in error. The former may be estopped by its acts. We are dealing with a question of the jurisdiction of this court, a question which the court must always take up, *suo motu*, if necessary, the question being at the threshhold of every case before it. (*Metcalf* vs. *Watertown*, 128 U. S., 586.)

The presumption is always against the jurisdiction of the Circuit Court unless the contrary affirmatively appears. (*Grace* vs. *Am. Cent. Ins. Co.*, 109 U. S. 278.) Its jurisdiction does not depend upon

the consent of parties actually made or constructively implied by estoppel. The jurisdiction is statutory and must follow the statute. When a corporation sues in that court, claiming jurisdiction through diversity of citizenship, it can maintain jurisdiction only by showing that it is the creation of the State of which it claims to be a corporation, and that it is really a corporation. Otherwise it is not a legal entity, a person in the eye of the law. "A corporation cannot for the purpose of jurisdiction in Federal courts be considered a citizen, or a resident, of a State in which it has not been incorporated." (*Southern Pacific Co.* vs. *Denton*, 146 U. S. 203.) When a complainant comes into the Circuit Court of the United States as a complainant and seeks to sustain the jurisdiction by virtue of its citizenship, it must establish that right in itself, and show the credentials of its birth and existence. The fact that as to certain persons and in certain transactions it may be a corporation *de facto* is not enough.

The defendant in error relies with full confidence upon the
206 case of *Tulare Irrigation District* vs. *Shepard*, 185 U. S., 1.

That was an action brought in the Circuit Court of the United States for the District of California by plaintiff against the Tulare Irrigation District, a public municipal corporation of the State of California. This district had issued coupon bonds for the purposes of their work, had floated them in the market, and plaintiff had become a *bona fide* purchaser for value. The coupons being matured, payment was refused and this suit was brought. The defence set up was on certain irregularities in forming the corporation. The act under which the corporation was created required that a petition for the organization of an irrigation district be presented to the supervisors of the county signed by the required number of freeholders. Before the petition was presented the act required that it be published in some newspaper at least two weeks before its presentation, "together with a notice stating the time of the meeting at which the same will be presented." In that case the petition was properly prepared and signed. The petition with the signatures was published in the proper newspaper together with the notice, but the signatures attached to the petition were not reproduced after the notice. All of the public signatures and notice were published in the same column and as one entire proceeding, separated from the rest of the contents of the newspaper by a black line across the column above and another across the column below this publication. This was charged as a fatal defect, and the bonds were claimed to be invalid. The opinion of the Supreme Court strikes the keynote of the decision in the opening sentences: "It is agreed in the statement of facts of this case that the money received from the sale of the bonds in suit were applied to building and constructing the irrigation works now in use by the defendant corporation. It has, therefore, received full consideration for which the bonds were issued, has built its works with the proceeds, and uses such works for the purposes intended. Notwithstanding these facts, it now refuses to

pay the bonds or the interest thereon, and while acting as a corporation at all times, still sets up that it never was legally organized, and hence had no legal right to issue any bonds." In the case of *Douglas County Commissioners* vs. *Bolles*, 94 U. S. 104, the court said: 'Common honesty demands that a debt thus incurred should be paid.' That sentiment has lost no force by
207 lapse of time, and we think applies in its full strength to this case. Unless there be some settled rule of law which prevents a recovery in this action, the judgment under review should be affirmed." This idea dominated the decision. It is evident from the opinion that the court thought the defendant a corporation *de jure*. But in the argument, assuming that there were irregularities, the court held that inasmuch as it attempted to organize under a general law, and that it actually used the franchise, and continued to act in every respect as a corporation, it could not deny its corporate existence so as to defeat its obligations. Indeed, had any other conclusion been reached, a fraud would have been sustained. The distinction between that case and the one at bar is broad and distinct. In the latter case the plaintiff below went into the circuit court claiming the jurisdiction because, and only because, it was a corporation, resident in a State other than the defendant. It was bound to prove its claim. In doing so it did not prove a *bona fide* attempt to fulfill the conditions of its incorporation. On the contrary, there is no evidence whatever of its use of the corporate franchise. It had no certificates of stock, no corporate capital, no declaration of dividends, and, as far as the record discloses, no corporate meeting after the first. Nor, as will be seen hereafter, will the ends of justice be defeated if it be not treated as a corporation.

In *Baltimore & Potomac R. R. Co.* vs. *Fifth Baptist Church*, 137 U. S., 568, the point now under discussion could not arise as the jurisdiction was not involved. *Shapleigh* vs. *San Angelo*, 167 U. S., 646, simply decides that a State, being creator of a municipal corporation, is the proper party to impeach the validity of its creation, and if the State acquiesces in the validity of a municipal corporation, the corporate existence thereof cannot be collaterally attacked.

It will be noticed that in all the cases in which suits by or against *de facto* corporations were sustained, the ruling is that the corporate existence cannot be collaterally attacked. In the case before us there is no collateral attack. The plaintiff below itself put that question directly in issue.

In our opinion, the plaintiff below, defendant in error here, failed to establish its first allegation as to its corporate capacity, and
208 that the court below erred in instructing the jury to find the issues in this regard in its favor.

This conclusion renders unnecessary any discussion of the other assignments of error.

The conclusion reached will not defeat the ends of justice, if the claim of the defendant in error be good. It is competent for the persons claiming to be incorporators to carry on the suit in their own

names, and as they have requisite citizenship the suit can be maintained in the Federal court. *Jones* vs. *Aspen Hardware Co.*, 29 L. R. A., 143.

It is ordered that the judgment of the circuit court be reversed. That this cause be remanded to that court, and if the plaintiffs below, defendants in error here, be so advised as to continue the suit in that court, that they be allowed to amend their complaint by inserting their individual names as plaintiffs, and that, thereupon, a new trial be granted. If, however, they decline to do this, that the suit be dismissed without prejudice.

Reversed.

209 Feb. 6, 1904, (same term) the court made and entered the following judgment, to-wit:

JUDGMENT.

Filed Feb. 6, 1904.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT.

No. 469.

Gastonia Cotton Manufacturing Company, Plaintiff in Error,	In Error to the Circuit Court of the United States for the Western District of North Carolina.
vs.	
W. L. Wells Company, Defendant in Error.	

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court, in this cause be, and the same is hereby, reversed with costs, and this cause is remanded to the Circuit Court of the United States for the Western District of North Carolina, at Charlotte, with directions that if the plaintiffs below, defendants in error here, be so advised as to continue the suit in that court, that they be allowed to amend their complaint by inserting their individual names as plaintiffs, and that thereupon a new trial be granted. If, however, they decline to do this, that the suit be dismissed without prejudice.

CHARLES H. SIMONTON,
Circuit Judge.

Feb. 6, 1904.

And on another day, to-wit: February 27, 1904, the mandate of this court is issued and transmitted to the said Circuit Court at Charlotte, N. C., in due form.

210 **CLERK'S CERTIFICATE.**

UNITED STATES OF AMERICA, Fourth Circuit, } ss.:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the record and files of the said Circuit Court of Appeals.

{Seal of the Court.} In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, this 20th day of April, A. D., 1904.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of
Appeals, Fourth Circuit.

211 UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do make return of the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 2nd day of June 1904, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified copy of the record now on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari.

Seal United States Circuit Court of Appeals, Fourth Circuit. In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals on this 13th day of June A. D. 1904.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

C. M. D.

212 UNITED STATES OF AMERICA:

IN THE CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

Gastonia Cotton Manufacturing Company,
Plaintiff in Error,
v.
W. L. Wells Company,
Defendant in Error.

It appearing that the Supreme Court of the United States has issued a writ of certiorari upon application of the W. L. Wells Company in the above entitled cause and has directed that the record and proceedings in said cause be certified and removed into the Supreme Court;

It is now agreed by the attorneys of the above entitled parties that the certified copy of the record now on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari.

This the 8th day of June, 1904.

EDNIS CANSLER,
ARMISTEAD BURWELL,
CHARLES PRICE,
Attorneys for Gastonia Manufacturing Company, Respondents.
CHAS. W. TILLETT,
JONES & TILLETT,
Attorneys for W. L. Wells Company, Petitioners.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United Statess Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing stipulation of counsel is a true copy of the original filed June 13, 1904, and now remaining among the records and proceedings in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals, at Richmond, on this 13th day of June, A. D., 1904.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

C. M. D.

213 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Gastonia Cotton Manufacturing Company is plaintiff in error and W. L. Wells Company, is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Western District of North Carolina, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed
214 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of June, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

215 [Endorsed:] File No. 19,312 Supreme Court of the United States. No. 237, October term, 1904. W. L. Wells Company, *vs.* Gastonia Cotton Manuf'g Co. Writ of certiorari and return. The execution of the within writ appears from the schedules thereto annexed. Henry T. Meloney, Clk. U. S. Cir. Ct. Appeals June 13, 1904 Filed June 14, 1904.